Drinking Water State Revolving Fund American Recovery and Reinvestment Act of 2009 (DWSRF ARRA)

Revised 8/17/2009

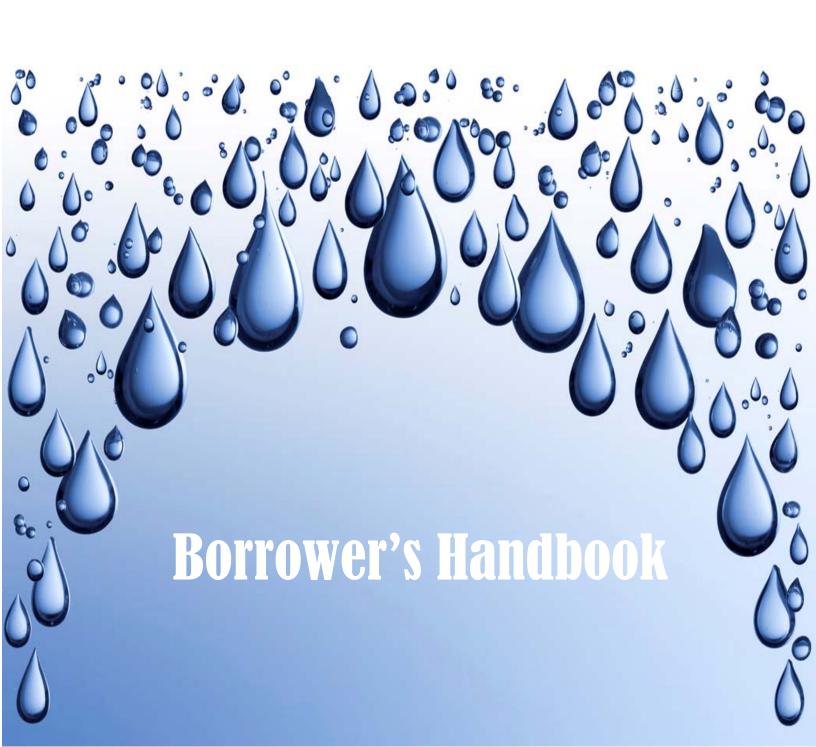


TABLE OF CONTENTS

Section 1.	General Information about the DWSRF ARRA Program	1
	1.1. What Is the DWSRF ARRA Program?	1
	1.2. Special Requirements for the DWSRF ARRA Program	
	1.3. DWSRF ARRA Subsidies Criteria	
	1.4. What Is the Difference between Municipal and Non-Municipal Borrowers?	
	1.5. Who Is Administering the DWSRF ARRA Program?	
Section 2.	Environmental and Cultural Review	
	Architectural & Engineering Services as Part of Your Project	
	Time of Performance Requirements and Project Completion	
	Requesting Reimbursement for Expenses Incurred	
	5.1. A-19 Invoice Voucher Submittal and Receiving Payment	
	5.2. Requesting Reimbursement for Pre-Construction Activities	6
	5.3. Requesting Reimbursement for Construction Activities	
Section 6.	Annual Payments	8
	Construction Workers and Davis Bacon/Prevailing Wages	
	7.1. Process Steps for Meeting This Requirement	8
	7.2. Listing ARRA Jobs with the Employment Security Department	
Section 8.	Buy American (Iron, Steel, and Manufactured Goods)	.11
	Suspension and Debarment	
Section 10	. Project Signs	.11
Section 11	. Disadvantaged Business Enterprise (DBE) Utilization Requirements	.12
	11.1. Fair Share Objective Goal	
	11.2. Fair Share Objective Exemption	. 12
	11.3. Six Good Faith Efforts	. 13
	11.4. Bidders List	
	11.5. New EPA Requirements (40 CFR, 33.302)	. 14
	. Nondiscrimination Provision	
Section 13	. Protection of Whistleblowers	. 16
Section 14	. Prohibition Statement	. 16
Section 15	. Required Reports	. 17
	15.1. Quarterly Reports	. 17
	15.2. Central Contractor Registration (CCR) Database and Reports	
	15.3. Other Reports	
Section 16	. Records	. 17
	. Audits	
Section 18	. Advertising for Construction Bids	
	18.1. The Competitive Bid Process	
	18.2. Difficulty in Obtaining Bids for Rural Areas Communities	
Section 19	. Bid Package Preparation and General Contractor and Subcontractor Requirements	. 19
Section 20	. Selecting the Lowest Responsible Bidder	. 20
	20.1. Reviewing the Bid Submittals	. 20
	20.2. Negotiating the Bid Price	
Section 21	. Additional Requirements for Non-Municipal Borrowers	. 20
	21.1. Hiring a Construction General Contractor	
	21.2. Property & Liability Insurance	
	21.3. Dedicated Repayment Account	
	rences for DWSRF ARRA Program	
Glossary		. 25

DWSRF ARRA Borrower's Handbook

DWSRF ARRA Borrower's Handbook

Requirements
Attachment b. Employment Security Department (LSD) 300 Eisting instructions
Attachment C . Record of Employee Interview Form
Attachment D. Weekly Payroll Review Checklist and U.S. DOL Certified Payroll Form35
Attachment E . Memorandum on Implementation of Buy American Provisions of P.L. 111-5, the
"American Recovery and Reinvestment Act of 2009"
Attachment F. Certification Regarding Debarment, Suspension, and Other Responsibility Matters39
Attachment G . Forms Associated with DBE Requirements43
Attachment H . Central Contractor Registration (CCR) Database and Reports45
Attachment I . Bid Packet Checklist
Attachment J . Notice of Contract Award and Notice to Proceed
Attachment K . Borrower's Checklist for DWSRF ARRA Projects51

Section 1. General Information about the DWSRF ARRA Program

This handbook is designed to assist the DWSRF ARRA borrowers with all the requirements under this program. This is not a binding legal document. Please refer to the DWSRF ARRA loan contract for all of the contractual requirements.

For the purpose of this booklet, the **borrower** is the loan recipient under contract with the Public Works Board. The **general contractor** is the contractor that is hired by the borrower to lead the construction project. The **subcontractors** are hired by the general contractor for work, supplies, equipment, or services under the scope of work of this project.

1.1. What Is the DWSRF ARRA Program?

The Drinking Water State Revolving Fund American Recovery and Reinvestment Act of 2009 (DWSRF ARRA) is a federal infrastructure loan program designed to assist publicly-owned (municipal) and privately-owned (non-municipal) drinking water systems (referred here as borrowers) around Washington State with low-interest construction loan funding. The main goals of the DWSRF ARRA program are:

- → To provide loans to water systems for capital improvements that increase public health protection and compliance with drinking water regulations;
- → To protect the health of the people of Washington State by ensuring safe and reliable drinking water;
- → To fund eligible projects that simultaneously create jobs, promote economic recovery, and generate long-term benefits from infrastructure investment;
- → To enter into binding commitments for projects that will proceed to construction by February 17, 2010;
- → To provide at least 50% of its funding be in the form of additional subsidies (loan forgiveness); and
- ⇒ To provide no less than 20% of the funds for projects that implement water, energy, or green efficiency.

1.2. Special Requirements for the DWSRF ARRA Program

Compared to the traditional DWSRF program, the DWSRF ARRA program has the following additional requirements:

- **○** Compliance with Davis Bacon/Prevailing Wage provisions (see Section 7);
- Compliance with American Iron, Steel, and Manufactured Goods provisions (see Section 8);
- Compliance with Disadvantaged Business Enterprise (see Section 11);

- Compliance with Section 1512. Reports on Use of Funds of Transparency and Oversight (see Section 15); and
- Secure a Data Universal Numbering System (DUNS) Number from http://fedgov.dnb.com/webform/.

1.3. DWSRF ARRA Subsidies Criteria

Under the DWSRF ARRA program, disadvantaged and distressed communities are eligible for partial or full principal loan forgiveness. The final loan amounts and loan forgiveness portions are calculated at project completion and are based on the project actual eligible costs.

Disadvantaged Communities

A disadvantaged community is defined as a community where 51% of the water system households are at or below 80% of the County's Median Household Income (MHI). Under the DWSRF ARRA program, disadvantaged communities are eligible to receive 100% forgiveness for the loan amount requested, provided that their project has complied with all the requirements under this program. The disadvantaged communities will receive the loan forgiveness upon project completion. After project completion, they will have five years to repay the loan fee (which is 1% of the requested amount at application) at 0% interest rate.

Community Located in a Distressed County

A community located in a distressed county is defined as a community residing in a **designated economically distressed county**, based on the Washington State Employment Security Department of Labor Market and Economic Analysis. The unemployment rate for an economically distressed county is greater than or equal to 5.9 percent.

For more details, please visit: http://www.workforceexplorer.com/article.asp?ARTICLEID=9625
Communities located in a distressed county are eligible to receive 50% forgiveness for their requested loan amount and 50% forgiveness for their loan interest accrued, provided that their project has complied with all the requirements under this program. The community located in a distressed county will receive the loan forgiveness upon project completion. After project completion, they will have twenty years to repay the remainder of their loan after the portion of forgiveness has been applied plus the loan fee (which is 1% of the requested amount at application) and any accrued interest. The interest rate is 1% per annum.

1.4. What Is the Difference between Municipal and Non-Municipal Borrowers?

A municipal borrower is a political unit, such as a city or town or special purpose district, such as a P.U.D., that is incorporated and self-governing.

A **non-municipal borrower** will fall under one of the following categories:

- ⇒ Home Owners Associations:
- Water Associations;
- Non-Profit Organizations; or
- **⇒** For-Profit Organizations.

Non-municipal borrowers must comply with additional requirements as listed in Section 21.

1.5. Who Is Administering the DWSRF ARRA Program?

The DWSRF ARRA loan program is jointly administered by the Washington State Department of Health's (DOH) Office of Drinking Water and two offices in the Department of Community, Trade, and Economic Development (CTED): the Public Works Board (PWB) and the Contracts Administration Unit (CAU).

application;

Use Plan:

DOH staff are responsible for:

Developing funding lists;

Scoring and ranking applications;

Department of Health Office of Drinking Water (DOH)

PO Box 47822 Olympia, WA 98504-7822

Loan application and general project questions:

Kitty Weisman (360) 236-3116

Environmental and cultural review process questions: Aleceia Tilley (360) 236-3095

implementation.

The PWB staff are responsible for:

- Conducting financial reviews of non-municipal applicants;
- ⇒ Negotiating a final scope of work (any changes to the scope of work after funding has been approved will be reviewed and approved by DOH);

Developing and publishing program guidelines and

⇒ Preparing and publishing the DWSRF ARRA Intended

• Overseeing the public health priorities of the program;

required for all federally-funded projects; and

populations of 1,000 or less in their project

Overseeing the environmental and cultural review process

Contracting with consultants to assist water systems with

- ⇒ Preparing and executing the loan contract documents; and
- Providing mandatory training in DWSRF ARRA requirements, in collaboration with CAU and DOH.

The CAU staff are responsible for:

- ⇒ Managing the DWSRF ARRA contracts once they are executed;
- ⇒ Monitoring Davis Bacon, Buy American, and the other ARRA requirements;
- ⇒ Processing requests for reimbursements during the project construction cycle;
- Processing amendments and project completion reports;
- ⇒ Preparing the annual loan billing statements, in collaboration with PWB.

Public Works Board (PWB)

906 Columbia Street SW PO Box 48319 Olympia, WA 98504

After a project has been approved and prior a loan contract being signed: Bruce Lund (360) 725-3163

Contracts Administration Unit (CAU)

128 10th Avenue S.W. PO Box 42525 Olympia, WA 98504-2525

After the loan contract is signed: (360) 725-3090



Section 2. Environmental and Cultural Review

All federally funded projects must undergo an environmental and cultural review. As the primacy agency, **DOH** ensures that projects comply with the State Environmental Review Process (SERP) and the National Historic Preservation Act (Section 106). Although SERP and Section 106 are two distinctive processes, DOH will coordinate both reviews as much as possible. SERP is essentially a checklist of all environmental regulations, which encompasses the State Environmental Policy Act (SEPA) and National Environmental Policy Act (NEPA).

Special Note for Municipalities: Special Note for Municipalities: WAC 197-11-305(b) of the SEPA does not apply to federally funded projects. A borrower cannot simply note on the application that a project is categorically exempted or only place the final determination in their files; additional steps are required. All borrowers, regardless of their exemption status, must document the decision and offer a public comment period for the final environmental determination.

As part of its oversight responsibility, DOH coordinates with the Department of Archaeology and Historic Preservation and Washington's Tribes on cultural reviews. DOH will notify borrowers if an archaeological survey is necessary. If a survey is required, borrowers must hire a certified archaeologist to conduct the survey and submit the report to DOH once it is completed.

Important: Borrowers cannot begin construction until they have consulted with DOH about their required environmental and cultural review, and received a Completion Letter or Determination of Nonsignificance. Contact Aleceia Tilley for more direction (see contact info below).

If a project includes multiple funding sources, borrowers need to contact DOH as soon as possible to ensure that Section 106 and SERP processes are completed in a coordinated manner with other funding program requirements.

Other Helpful Tips:

- Submitting the Project Review Sheet (EZ-1 Form) to DOH initiates the cultural review.
- The quad map on the EZ-1 Form must clearly identify the project area. Borrowers must outline and label the entire project area.
- **○** Borrowers must submit an EZ-2 Form with their application if they propose to modify a structure or a building that is more than 45 years old.

Aleceia Tilley

DWSRF SERP & Section 106 Process Lead Office of Drinking Water Washington State Department of Health P.O. Box 47822 Olympia, WA 98504-7822 Telephone: (360) 236-3095 Fax: (360) 236-2252 E-mail: aleceia.tilley@doh.wa.gov



Section 3. Architectural & Engineering Services as Part of Your Project

Borrowers may use their own staff for engineering and design work for their DWSRF ARRA project. Also, if borrowers are already under contract with an engineering or architectural consultant, they may continue to use that consultant for their project. Alternately, if borrowers will need to hire engineering or architectural consultants, they are required to follow these guidelines:

- ⊃ Publish the request for professional services in a local paper. The announcement should state the general scope and nature of the project or work and how to contact the borrower for additional information. Borrowers need to document why they selected the chosen firm, indicating why that firm is the most qualified for the job. When selecting an architectural and engineering services firm, price or fees are not a consideration.
- ⇒ Borrowers should negotiate a contract with the most qualified firm for architectural and engineering services, at a price they determine to be fair and reasonable. In making a determination, borrowers should take into account the estimated value of the services to be performed, as well as the scope and complexity of the project.
- ⇒ Prior to awarding a contract, borrowers must ensure and document that the consultant has not been suspended or debarred from receiving federal funds (see Section 9 for more details).

Section 4. Time of Performance Requirements and Project Completion

Borrowers must award a construction contract or start construction by February 17, 2010, and be completed within 36 months of contract execution (i.e., within 36 months of the date PWB signs the loan contract). Loan contracts may be terminated if projects have not progressed to competitive bid by February 17, 2010. Loan performance timelines may be amended on a case-by-case basis, when there is proof of extenuating circumstances on the borrower's part.

Borrowers are required to submit the following documents to DOH:

- ⇒ A draft water system plan, plan amendment, or small water system management program on the date DOH has set for the borrower (refer to the Time of Performance section in the loan contract), and must receive DOH's approval by project completion.
- When the project is complete, borrowers are required to submit to DOH a Construction Completion Report.

DOH forms can be found at: http://www.doh.wa.gov/ehp/dw/forms/forms.htm (view Engineering and Planning submittals to select the correct form).

In addition, borrowers are required to submit the DWSRF ARRA contract Project Completion Request to CAU, in order to formally complete their project. Borrowers will need to submit this request through PWeB.

Section 5. Requesting Reimbursement for Expenses Incurred

5.1. A-19 Invoice Voucher Submittal and Receiving Payment

Borrowers must request reimbursements using the *A-19 Invoice Voucher*. CAU will provide this form to borrowers along with their copy of the executed loan contract. An **original signature** in **blue ink** is required. Vouchers should NOT be signed in black ink, as the voucher can be mistaken for a photocopy, which would delay its processing. No photocopies will be accepted.

The *A-19 Invoice Voucher* must include documentation stating that the service and/or materials have **already** been provided. Invoices for work or services completed must be attached as such documentation. Borrowers do not have to pay the invoice prior to requesting reimbursement from CAU, but the expense must have been already incurred.

Once CAU receives a borrower's *A-19 Invoice Voucher*, they will work with DOH to obtain approval (if necessary) prior to issuing a payment to the borrower. CAU will not pay a general contractor or subcontractors directly.

Borrowers may draw up to 90% of the approved loan funds for eligible project activities. The final 10% of loan funds will be withheld until the project is complete.

Borrowers are encouraged to establish an electronic transfer account (EFT) to receive payment. Contact the Office of Financial Management staff at (360) 664-7779 to request information on how to set up an EFT account, or send an email to vendorhelpdesk@ofm.wa.gov.

5.2. Requesting Reimbursement for Pre-Construction Activities

After the loan contract is executed between a borrower and the PWB, borrowers may begin requesting reimbursement (i.e., make loan draws) for eligible **pre-construction costs.** Only expenses incurred **after March 1, 2009,** are eligible for reimbursement. Please refer to the loan contract for the definition of eligible costs under the DWSRF ARRA program.

Prior to requesting a pre-construction reimbursement, **non-municipal** borrowers must meet two additional conditions:

- ⇒ Proof of liability insurance must be sent to CAU within 30 days of contract execution (see Section 21.2 for details), and
- ⇒ A dedicated repayment account must be established (see Section 21.3 for details).

Submit your request for reimbursement on an A-19 Invoice Voucher to CAU.

BOLLOMEL,

5.3. Requesting Reimbursement for Construction Activities

There are certain loan contract conditions that must be met prior to construction of a project and prior to requesting a reimbursement for construction activities. Meeting these conditions may take from 60 to 180 days (or sometimes longer) to complete. Prior to requesting a construction reimbursement, borrowers must meet the following conditions:

- Obtained approval from DOH for the SERP and Section 106 reviews (as described in the previous section);
- **⊃** Issued a *Notice of Contract Award and Notice to Proceed* (Attachment J), which follows the formal award of a construction contract;
- Complied with Prevailing Wage/Davis Bacon requirements;
- Complied with Buy American Iron, Steel, and Manufactured Goods requirements;
- Obtained approval from DOH of the *Project Report* and related *Construction Documents*¹ for all applicable activities described in the project's scope of work; and
- Complied with any other loan contractual conditions required by DOH or PWB.

Additionally, borrowers will need to include the following with their *A-19 Invoice Voucher* for **construction** reimbursement:

- → Prevailing wage documentation (21-day labor packet) with the first request for construction reimbursement (see Section 7 and Attachment A);
- Certified compliance with Buy American, to be certified **on every** *A-19 Invoice Voucher* (see Section 8 and Attachment E);
- ⇒ Federal Suspension and Debarment documentation (see Section 9 and Attachment F);
- Disadvantaged Business Enterprise (DBE) documentation (see Section 11 and Attachment G).

7

¹ The *Project Report* and related *Construction Documents* outline the proposed work and are prepared by the project engineer, and must be submitted to DOH for approval.

Section 6. Annual Payments

The loan annual payment (principal and interest) will be deferred until the project is completed. Borrowers' first payment will be due on October 1st on the year following their project completion and shall consist of interest only, based on the loan funds drawn to date. Subsequent payments (all due on October 1st of each subsequent year) shall consist of the principal balance due divided by the loan term remaining plus accrued interest on the unpaid balance of the loan. Borrowers will have 30 days after October 1st to make their payment. If a borrower misses a payment due date, a late fee of 1% of the total payment due will be assessed each month. The loan term determination is based on the borrower's distressed status, as described in Section 1.

Section 7. Construction Workers and Davis Bacon/Prevailing Wages

Under the DWSRF ARRA program, borrowers, their general contractors, and subcontractors are required to pay the higher of either the state prevailing wages or the federal prevailing wages.

Projects funded by the DWSRF ARRA program are subject to Section 1606 of the ARRA. The purpose of Section 1606 is to apply Davis-Bacon Act wage rules to all assistance agreements made in whole or in part with funds appropriated under this program. Both the borrower and its general contractor are legally and financially responsible for compliance with the Davis-Bacon Act wage rules. All laborers and mechanics employed by general contractors and subcontractors on projects funded directly by or assisted in whole or in part pursuant to ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. Refer to Attachment A for more details and helpful links on prevailing wages and Davis Bacon.

The project funded by this program is also subject to the state prevailing wage law, **Chapter 39.12 RCW**. The borrower and its subcontractors are advised to consult the Washington State Department of Labor and Industries or private counsel to determine the prevailing wages that must be paid.

7.1. Process Steps for Meeting This Requirement

For all DWSRF ARRA projects, borrowers will need to follow the process steps listed below to ensure that the prevailing wage requirement is met.

- 1. Bid documents preparation:
 - a. Three to four weeks prior to advertising the bid, the borrower will obtain Wage Determinations for both state and federal wage rates (from CAU or from the U.S.

Department of Labor and Washington State Department of Labor & Industries websites and provide a copy to CAU). Both state and federal rates must be included in the bid packet. See Attachment A for website links. Prior to advertising, the borrower will send a copy of the draft ad to CAU for the compact of the compact of

- b. Prior to advertising, the borrower will send a copy of the draft ad to CAU for their review. CAU reviews and informs the borrower if the advertisement contains all required elements. Then the advertisement may be published.
- c. 10 days prior to bid opening, the borrower confirms with CAU that wage rates have not changed. This locks in the rates for the length of the project. If rates have changed, CAU notifies the borrower and the borrower must provide the new rates to all potential bidders (entities that have requested bid packets).
- d. Borrower ensures that the Prevailing Wage/Davis Bacon requirement is checked in the *Bid Package Checklist* (see Attachment I) that is being submitted to CAU.
- e. Documentation of bid advertisement and bid packet must be maintained in the borrower's contract file.

2. After the bid is awarded:

- a. Borrower conducts pre-construction conference with general contractor to review ARRA requirements. Borrower completes and submits a completed and signed *Notice of Contract Award and Notice to Proceed* form (see Attachment J) to CAU.
- b. Borrower maintains a copy of the *Notice of Contract Award and Notice to Proceed* form in the borrower's contract file.

3. After the first week of actual construction activity:

- a. Borrower ensures that the following conditions are met:
 - i. Borrower ensures that the general contractor and all subcontractors submit properly committed certified payrolls to the borrower on a weekly basis.
 - ii. Borrower interviews one worker per job class after first week of construction (process may need to be repeated on the second or third week to ensure actual construction is underway). See Attachment C. Record of Employee Interview Form.
 - iii. Borrower sends the 21-day labor packet² to CAU. Borrower ensures all documents are properly completed before sending. To order a *Statement of Intent to Pay Prevailing Wages* form and see a sample, please visit the Washington State Department of Labor & Industries at http://www.lni.wa.gov/FormPub/Detail.asp?DocID=1918. Also, see Attachment D. Weekly Payroll Review Checklist and U.S. Department of Labor Certified Payroll Form.
 - iv. CAU reviews and if underpayments are found, CAU will notify the borrower and the borrower requires the general contractor to make the additional payments to affected workers. The general contractor must submit a corrected certified payroll for the additional payments to the borrower. The borrower notifies CAU the underpayments have been

9

² The 21-day labor packet is the first week's certified payroll (of actual construction), the completed and approved *Statement of Intent to Pay Prevailing Wage* form, and the copies of the worker interviews. This can be submitted to CAU anytime after the first week of actual construction activity.

- corrected and sends the corrected certified payroll to CAU. Then CAU accepts the packet.
- v. CAU notifies DOH that the 21-day labor packet has been accepted.
- vi. Borrower interviews one worker from each/every new work classification after one week on the job site. If new work classification is needed, the borrower requests a wage classification from the U.S. Department of Labor and provides a copy to CAU.
- vii. Borrower maintains copies of weekly certified payroll, worker interview forms, and wage classifications in files.
- viii. At project completion, borrower submits to CAU a signed statement certifying that all weekly certified payrolls and documentation are on file and available for audit.

Note: projects with a DOH assigned technical assistance consultant will receive assistance on meeting prevailing wage requirements including:

- ⇒ Conducting and documenting worker interviews.
- ⇒ Checking correct wage decisions are being used.
- Reviewing weekly certified payroll (after first week) and assisting with resolving underpayments.
- ⇒ Requesting additional wage classifications from the U.S. Department of Labor (sending a copy of the letter and responding new wage determination to CAU).
- ⇒ Reviewing and verifying prevailing wage requirements have been met.
- ⇒ Verifying borrower's certification of compliance with prevailing wage requirements prior to submittal to CAU.

Note: If a project is already underway, with a Community Development Block Grant (CDBG) funding, has the same scope of work, and CAU has accepted the 21-day labor packet for the project's general contractor, contact your CAU Project Manager. If appropriate, the documentation may be copied to the DWSRF ARRA contract file and will meet steps i through iv above.

7.2. Listing ARRA Jobs with the Employment Security Department

Borrowers must ensure that their general contractors and subcontractors post all job openings on the Employment Security Department website: http://www.go2worksource.com and also report their subsequent hiring results and jobs retained. The only exception to these requirements are jobs that are filled through union hiring halls. Detailed instructions, frequently asked questions and answers, and model language are included in Attachment B.

Section 8. Buy American (Iron, Steel, and Manufactured Goods)

Section 1605 of the ARRA requires that all of the iron, steel, and manufactured goods used in ARRA-funded projects be produced in the United States unless the EPA grants a waiver or compliance that would compromise U.S. obligations under international agreements. EPA has published guidance materials on general and public interest waivers to this requirement. See Attachment E for detailed waiver information.

If after reading the EPA instructions borrowers still have questions about meeting this requirement, they should contact DOH for additional guidance.

Section 9. Suspension and Debarment

Pursuant to **40CRF32.110**, all general contractors and subcontractors receiving ARRA funds must certify that the federal government has not suspended or debarred them from receiving federal funds. All general contractors and subcontractors will be asked to provide debarment and suspension documentation to PWB and to keep a copy on file with their project records. **It is the borrower's responsibility to obtain these certifications and provide them to PWB**.

Borrowers should also ensure that the general contractor and all subcontractors associated with their construction project are not on the federal suspension and debarment list. Borrowers may conduct a search online at https://www.epls.gov. Results of that search need to be printed out for the borrower's files and an additional copy needs to be sent to CAU for their records.

A Certification Regarding Debarment, Suspension, and Other Responsibility Matters form has been attached at the end of Attachment F. This form will also be attached to the loan contract documents.

Section 10. Project Signs

Borrowers, as well as their general contractors and subcontractors, must display the ARRA logo in a manner that informs the public that the project is an ARRA investment. The ARRA logo may be obtained from the Environmental Protection Agency (EPA) website at:

http://www.recovery.gov/?q=content/president-and-vice-president-unveil-new-recovery-emblem-download-available or writing to the EPA regional office at:

EPA Region 10

Mail Code OMP-145 1200 Sixth Avenue, Suite 900 Seattle, WA 98101

ROTTOWEL'

If the EPA logo is displayed along with the ARRA logo and logos of other participating entities, the ARRA logo must not be displayed in a manner that implies that EPA itself is conducting the project. Instead, the EPA logo must be accompanied with a statement indicating that the general contractor (or subcontractor) received EPA funds for the project.

Section 11. Disadvantaged Business Enterprise (DBE) Utilization Requirements

Small, minority-, and women-owned firms should be afforded the maximum opportunity to compete for and obtain bid documents for projects funded by the DWSRF ARRA program. The level of participation by small, minority- and women-owned firms should be consistent with their general availability within the professional communities involved. For more detailed information on DBE, please visit http://www.epa.gov/osbp/grants.htm.

11.1. Fair Share Objective Goal

A fair share objective is a goal based on the capacity and availability of qualified, certified Minority Business Enterprises (MBEs) and Women's Business Enterprises (WBEs) in the relevant geographic market. As mandated by EPA, all general contractors and subcontractors must comply with the requirements of the EPA's Program for Utilization of Small, Minority, and Women's Business Enterprises (40 CFR, Part 33) in procurement under the DWSRF ARRA program. The goals for the utilization of disadvantaged businesses are as follows:

Construction 10% MBE 6% WBE Supplies 8% MBE 4% WBE Equipment 8% MBE 4% WBE Purchased Services 10% MBE 4% WBE

All general contractors and subcontractors must accept the fair share objectives/goals stated above and attest to the fact that they are purchasing the same or similar construction, supplies, services, and equipment, in the same or similar relevant geographic buying market as Washington Office of Minority Women Business goal is being adopted.

IMPORTANT: Borrowers must only count in MBEs and WBEs that are certified by EPA, SBA, DOT, or by state, local, tribal, or private entities (whose certification criteria match EPA's) towards their MBEs and WBEs utilization goals.

11.2. Fair Share Objective Exemption

Under the DWSRF ARRA program, borrowers receiving a total of \$250,000 or less in EPA funds (including ARRA) in a given fiscal year are exempted from the Fair Share Objective requirement.

Borrower's Handbook

11.3. Six Good Faith Efforts

At a minimum, borrowers should follow the six good faith efforts listed below to ensure maximum participation among the DBEs. These efforts are also listed in every DWSRF ARRA loan contract by attachment, and will be a required of all borrowers.

- 1. Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local Government recipients, this will include placing the DBEs on solicitation lists and soliciting them whenever they are potential sources.
- 2. Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of thirty (30) calendar days before the bid or proposal closing date.
- 3. Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State, and Local Government recipients, this will include dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
- **4.** Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
- **5**. Use the services and assistance of the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce.
- **6.** If the general contractor awards contracts to subcontractors, also require the general contractor to take the five good faith efforts in paragraphs 1 through 5 above.

Borrowers will be required to provide documentation to CAU showing that they have followed the six efforts above. There are three options to provide this documentation:

- ⇒ Provide an affidavit of publication of competitive bid that includes the following language at the least: "Small, minority-, and women-owned business are encouraged to submit bids":
- ⇒ Provide proof of bid package submittal to a plan center³; or
- ⇒ Post bid advertisement on the Washington State Office of Minority and Women Business Enterprise (OMWBE) website at www.omwbe.org.

11.4. Bidders List

Borrowers must document and maintain a list of general contractors to whom bid advertisements were sent (the list must include both DBE and non-DBE bidders). The bidders list must be kept until the grant project period has expired and the recipient is no longer receiving EPA funding under the grant. For entities receiving identified loans, the bidders list must be kept until the

-

³ Borrower has the option to submit their bid package to Urban League of Metropolitan Seattle, Contractor Development and Competitiveness Center, 105 14th Ave, Seattle, WA 98122; (206) 323-0721; plans@cdcccontractors.com.

project period for the identified loan has ended. The following information must be obtained from all prime and subcontractors:

- Entity's name with point of contact;
- **○** Entity's mailing address, telephone number, and e-mail address;
- The procurement on which the entity bid or quoted, and when; and
- **⇒** Entity's status as an MBE/WBE or non-MBE/WBE.

Under the DWSRF ARRA program, borrowers receiving a total of \$250,000 or less in EPA funds (including ARRA) in a given fiscal year are exempted from the Bidders List requirement.

11.5. New EPA Requirements (40 CFR, 33.302)

There are a number of new provisions set by EPA to prevent unfair practices that adversely affect DBEs:

- ⇒ General contractors are required to pay the DBE subcontractors for satisfactory performance no more than 30 days from the time they received reimbursement from borrowers.
- General contractors must notify the borrowers prior to any DBE termination for convenience.
- ⇒ If a DBE general contractor or subcontractor fails to complete work under the contract for any reason, the Six Good Faith Efforts must be employed in soliciting a replacement.
- ⇒ Borrowers and general contractors are required to employ the Six Good Faith Efforts even if they achieved their fair share objectives.
- ⇒ Borrowers must ensure that the following three forms are completed and submitted appropriately. We strongly encourage the borrower to request and retain copies on file for all of the submitted forms. The forms need to be completed only if DBE subcontractors are employed. Copies of these forms are included in Attachment G. Alternatively, to download these forms in PDF format, please visit http://www.epa.gov/osbp/grants.htm.

EPA Form 6100-2 — **DBE Program Subcontractor Participation Form**

The form gives a DBE subcontractor the opportunity to describe the work the DBE subcontractor received from the general contractor, how much the DBE subcontractor was paid, and any concerns the DBE subcontractor might have.

EPA Requirement: Borrowers are required to have their general contractor provide this

form to the DBE subcontractors.

Form Provided By: General contractor provides form to DBE subcontractors.

Form Completed By: DBE subcontractors.

Form Submittal Process: DBE subcontractors submit form directly to EPA: Attn. Greg Luchey,

EPA Region 10, M/A OMP-145, Seattle, WA 98101; (206) 553-2967; Luchey.Greg@epamail.epa.gov. Subcontractors also send copy to general contractor.

BOTTOV and book

EPA Form 6100-3 — DBE Program Subcontractor Performance Form

The form captures an intended DBE subcontractor's description of work to be performed for the general contractor and the price of the work the subcontractor submitted to the general contractor.

EPA Requirement: Borrowers are required to have their general contractor provide this

form to the DBE subcontractors.

Form Provided By: General contractor provides form to DBE subcontractors.

Form Completed By: DBE subcontractors.

Form Submittal Process: DBE subcontractors submit form to general contractor.

General contractor includes the forms in their bidding submittal

package, which is submitted to borrower. General contractor submits form to EPA.

EPA Form 6100-4 — DBE Program Subcontractor Utilization Form

The form captures the general contractor's intended use of an identified DBE subcontractor and the estimated dollar amount of that subcontract.

EPA Requirement: Borrowers are required to have their general contractor complete this

form if they utilize DBE subcontractors.

Form Provided By: Borrower provides form to general contractor.

Form Completed By: General contractor.

Form Submittal Process: General contractor submits form as part of their bidding submittal,

which is submitted to borrower.

General contractor also submits form to EPA.

Section 12. Nondiscrimination Provision

During the performance of their contract, the borrower, its general contractor, and subcontractors shall comply with all federal and state nondiscrimination laws, including, but not limited to Chapter 49.60 RCW, Washington's Law Against Discrimination, and 42 U.S.C. 12101 et seq, the Americans with Disabilities Act (ADA).

In the event of their noncompliance or refusal to comply with any applicable nondiscrimination law, regulation, or policy, their contract may be rescinded, canceled, or terminated in whole or in part, and they may be declared ineligible for further contracts under this program. They shall, however, be given a reasonable time in which to cure this noncompliance.

The borrower must also include the following terms and conditions in contracts with the general contractor. Furthermore, the general contractor must also include these terms in its contracts with all its subcontractors:

"The General Contractor/Subcontractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this Contract. The General

15

Contractor/Subcontractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under Environmental Protection Agency financial agreements. Failure by the General Contractor/Subcontractor to carry out these requirements is a material breach of this Contract which may result in termination of this Contract."

Section 13. Protection of Whistleblowers

In accordance with Section 1553 of the ARRA, the borrower, its general contractor, and subcontractors must agrees that during the performance of this project, their employees may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to PWB, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives, information that the employee reasonably believes is evidence of:

- 1. Gross mismanagement of an agency contract or grant relating to covered funds;
- 2. A gross waste of covered funds;
- 3. A substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- 4. An abuse of authority related to the implementation or use of covered funds; or,
- 5. A violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

Section 14. Prohibition Statement

Pursuant to Section 106 of the Trafficking Victims Protection Act of 2009, as amended, borrowers (non-municipals only), all general contractors, and subcontractors employees may not engage in severe forms of trafficking in persons during the period of time their contract is in effect, procure a commercial sex act during the period of time their contract is in effect, or use forced labor during the performance of their contract.

Section 15. Required Reports

15.1. Quarterly Reports

Borrowers are required to submit quarterly progress reports to CAU. The quarterly reports serve as a means to monitor the project and identify any issues that may need to be addressed. Note that our reporting system is based on the state fiscal year calendar, e.g., Quarter 1 starts on July 1 and ends on September 30.

Borrowers are required to submit these reports online using the PWeB system (web-based database used by PWB and CAU to manage and administer the DWSRF ARRA loans). Training on how to access and use PWeB is available through the PWB staff.

15.2. Central Contractor Registration (CCR) Database and Reports

The CCR is a government-wide registry for organizations that seek to do business with the federal government. The CCR collects, validates, stores, and disseminates data to support a variety of federal initiatives. Borrowers are required to register and maintain updated project records in the CCR database. **Proof of registering with CCR will be required prior to PWB's execution of the loan contract.** In order to register in the CCR, borrowers will need their Data Universal Number (DUN). See Attachment H for more information.

15.3. Other Reports

In addition to the above, the borrower, at such times and on such forms as DOH, PWB, or CAU may require, shall furnish reports in compliance with the ARRA requirements.

Section 16. Records

All records and files pertaining to the DWSRF ARRA application, engineering, and construction of the project must be stored for the life of the loan plus six years (typically a total of six years for loans that are forgiven and a total of twenty-six years for loans that are repaid). Records of operating and maintenance costs do not have to be saved for purposes of this DWSRF ARRA loan.

Section 17. Audits

All borrowers that expend \$500,000 or more in federal funds (from all sources) in any fiscal year must have an audit conducted in accordance with Office of Management and Budget (OMB) revised Circular A-133. The audit must be conducted within nine months of the end of the fiscal year in which the \$500,000 threshold is met.

Note: Non-municipal borrowers in need of locating an auditor, for purposes of complying with the audit, should contact the Washington Society of CPA's at http://www.wscpa.org.

The applicable federal category for the DWSRF ARRA is CFDA 66.468.

Borrowers are strongly encouraged to include audit requirements (such as accurate record maintenance and retention) in their contract language with the general contractor and any other entities for work or services under this program.

Section 18. Advertising for Construction Bids

18.1. The Competitive Bid Process

Borrowers are required to use a **competitive bid process** when choosing a general contractor for DWSRF ARRA-funded projects, following the guidelines listed below. Utilizing a Small Works Roster is **not an acceptable method** to use for competitive bidding of DWSRF ARRA-funded projects. Additionally, under the DWSRF ARRA program, borrowers must include additional requirements in their bidding packages and any subsequent contracts for work or services, as described in Section 19.

- 1. Bids should be advertised in the largest local newspaper for the project area. The length of time the bid should be advertised depends on the complexity of the construction project. General contractors must be given enough time to research specifications and submit responsible proposals. Borrowers should advertise the bid once a week for two weeks in a newspaper of general circulation. A minimum of 14 calendar days must be allowed between the date of the last publication and the bid opening date.
- 2. At a minimum, a bid advertisement should include the following items:
 - Title of project;
 - Nature and scope of work;
 - ⇒ Location where plans and specifications documents may be obtained;
 - Cost, if any, to obtain a set of plans and specifications documents;
 - The place, date, and time that the bids are due;
 - Statement that the borrower retains the right to reject any and all bids;
 - List of the funding sources for the project, including the DWSRF ARRA funds;
 - ⇒ Requirement that the higher of state or federal prevailing wages must be paid;
 - Statement indicating that borrower is an Equal Opportunity Employer;
 - Statement that DWSRF ARRA requirements or provisions must be met by general contractors and all subcontractors.
- 3. Bids must be opened in public at the time and place stated in the advertisement. The bid opening can be delayed, but all the bidders must be notified in advance. If a bid opening

- is delayed, all bidders should have the opportunity to withdraw their bids, or, if they wish, resubmit the bid (e.g., cost of equipment, materials, etc. could increase) just before the new bid opening date and time.
- **4.** If no bids are received, or the received bids are too costly, re-advertise the bid ad in a wider geographic area. Borrowers are encouraged to maintain a list of reputable general contractors that have done good work for them in the past or have bid previous projects in order to alert them of the bid request.
- **5. Prior** to advertising, send a copy of the **draft** bid advertisement to CAU for their review.

18.2. Difficulty in Obtaining Bids for Rural Areas Communities

If a borrower is located in a rural area of the state and has difficulty in soliciting bids for construction projects, along with advertising for competitive bid in the local newspaper, they may also directly solicit bids from general contractors as part of the bidding process.

Section 19. Bid Package Preparation and General Contractor and Subcontractor Requirements

Borrowers shall ensure that provisions for each of the following DWSRF ARRA requirements are included in their bid package. Additionally, these requirements must be included in the contract between the borrower and its selected general contractor, as well as in all subsequent contracts between the general contractor and all its subcontractors.

- 1. Prevailing Wage/Davis Bacon (see Section 7);
- 2. Listing ARRA Jobs with the Employment Security Department (see Section 7);
- 3. Buy American Iron, Steel, and Manufactured Goods (see Section 8);
- 4. Suspension and Debarment Certification (see Section 9);
- **5.** Project Signs (see Section 10);
- **6.** Disadvantaged Business Enterprise (see Section 11);
- 7. Nondiscrimination Provision (see Section 12);
- **8.** Protection of Whistleblowers (see Section 13); and
- **9.** Prohibition Statement (see Section 14).

Borrowers must send to CAU a checklist of all the documents that were included in the bid packet. Refer to Attachment I for the *Bid Packet Checklist*.

Section 20. Selecting the Lowest Responsible Bidder

20.1. Reviewing the Bid Submittals

The bids received should show in detail the estimated total cost of the work, a unit price for each component of the project and its overall individual cost, and the estimated completion schedule for each phase. The lowest responsible bidder must:

- ⇒ Have the ability, capacity, and skill to perform the work described in the contract scope of work;
- ⇒ Have good character, integrity, reputation, judgment, experience, and efficiency;
- **⇒** Be able to perform within the time specified; and
- → Demonstrate successful performance of previous construction contracts or services, and demonstrate compliance with laws relating to the loan contract or services.

Borrowers may choose to consider social criteria when determining "responsibility," e.g., items listed in Section 11 regarding DBE.

20.2. Negotiating the Bid Price

Negotiation of bid price, based upon agreed changes to the plans and specifications in the bid documents, is allowed with a low responsible bidder under the following conditions:

- ⇒ All bids exceed the available funds, as certified by the appropriate fiscal officer;
- The apparent low responsible bid does not exceed the available funds by 5% on projects valued under one million dollars, or the greater of fifty thousand dollars or 2.5% for projects valued between one million and five million dollars; and
- The negotiated adjustment will bring the bid price within the amount of available funds.

Section 21. Additional Requirements for Non-Municipal Borrowers

21.1. Hiring a Construction General Contractor

The selected general contractor must be licensed, bonded, and insured in the State of Washington. General contractors are not required to have payment/performance bonds, which are above and beyond normal bonding requirements. However, this type of bonding ensures that liability is covered and can reduce a borrower's exposure to risk. We strongly encourage borrowers to require this type of bonding if their loan contract with PWB is over \$100,000. A performance bond guarantees that the general contractor will complete the contract according to its terms, within schedule and budget. In case of default, the insurance company will pay the borrower the

BOITOWER

amount of the bond, which is usually the amount of the construction contract. A payment bond also guarantees that subcontractors and suppliers will be paid the money they are due from the general contractor, which reduces the possibility of liens against the project.

It is important to ensure that the bonding company and insurance company recognize the borrower as an interested party and that the borrower is to be notified if the bond or insurance is terminated. Borrowers will also need to notify PWB and CAU staff if payment and/or performance bonds are terminated for any reason.

21.2. Property & Liability Insurance

Liability Coverage

Commercial general liability coverage must be obtained at the borrower's sole expense and kept in force until the completion of the activities listed in the DWSRF ARRA loan contract scope of work. The recommended policy limits should be no less than \$1,000,000 per occurrence with a general aggregate limit of \$5,000,000, or the amount of the DWSRF ARRA loan.

Proof of liability coverage, in the form of a certificate of insurance, is required within thirty (30) business days of the execution of a DWSRF ARRA loan contract.

Property Coverage

Property coverage must be obtained at the borrower's sole expense and kept in force during the entire term of the loan. This insurance provides coverage for all risks of physical damage or loss to the improvements and/or structures to be constructed using the proceeds of the loan contemplated by this contract.

Proof of property coverage, in the form of a certificate of insurance, is required upon issuance of Notice to Proceed.

For assistance with insurance coverage, check with the Office of the Insurance Commission for Washington State at http://www.insurance.wa.gov or call them at 1(800)562-6900.

21.3. Dedicated Repayment Account

Non-municipal borrowers must establish a dedicated account with an FDIC-insured institution to handle the funds for repaying this loan. This account will be solely used for the purpose of repaying the DWSRF ARRA loan. A copy of a bank statement must accompany a borrower's first request for reimbursement. At the end of each quarter during the term of this loan, borrowers are required to deposit twenty-five percent of their next annual loan payment into this account and send a copy of the bank statement showing each deposit to CAU.

Quick References for DWSRF ARRA Program

Environmental Protection Agency (ARRA information): http://www.epa.gov/recovery/

Office of Minority & Women's Businesses: http://www.omwbe.wa.gov/

Labor & Industries Prevailing Wage: http://www.lni.wa.gov/

U.S. Department of Labor: http://www.wdol.gov/

Excluded Parties List System: http://www.epls.gov/

Public Works Board: http://www.pwb.wa.gov/

Washington State Department of Health: http://www.doh.wa.gov/

Washington State Department of Health, Drinking Water: http://www.doh.wa.gov/ehp/dw

Washington Society of Certified Public Accountants: http://www.wscpa.org/

Washington Small Business Development: http://www.wsbdc.org/

Public Works Board Recovery: http://recovery.pwb.wa.gov

Public Works Board PweB on-line loan management system:

https://fortress.wa.gov/cted/pwbloantracking/ (requires borrower to be trained by PWB staff and to have been issued a password)

Glossary

A-19 Reimbursement The form used to request payment for DWSRF ARRA

Voucher expenses incurred.

ARRA American Recovery and Reinvestment Act of 2009

Borrower The organization receiving the DWSRF ARRA funds by

contracting with the Public Works Board

Circular A-133 A federal audit required of all borrowers who draw over

\$500,000 in a calendar year.

Competitive Bid Process All construction activities must be contracted out to the lowest

responsible bidder through a competitive bidding process.

General Contractor The prime contractor hired by the borrower to lead the

construction project. The general contractor will hire subcontractors for work and services to complete the

construction project.

Construction Completion

Report

A form submitted to the Department of Health by the project

engineer certifying that the project is complete.

Contracts Administration

Unit (CAU)

A work group within the State Department of Community, Trade and Economic Development that carries out contract

management duties for Drinking Water State Revolving Fund

borrowers.

CTED WA Department of Community, Trade and Economic

Development.

DAHP WA Department of Archaeology and Historic Preservation,

which reviews cultural resource activities for federal and state

funded projects.

DOT United States Department of Transportation.

Electronic Funds Transfer

(EFT)

DWSRF ARRA borrowers are encouraged to sign up for EFT to have funds transferred to their accounts electronically rather

than through the mail by State Warrant.

Environmental Review Depending on the project and prior to beginning construction,

all DWSRF ARRA borrowers need to complete the State Environmental Review Process (SERP) or the National Environmental Policy Act (NEPA). The Washington State Department of Health determines which process will be used

and approves the completion of the process.

EPA U.S. Environmental Protection Agency.

5

Executed Loan A loan agreement/contract is considered "executed" once the document is signed by the borrower and the Public Works

document is signed by the borrower and the Public Works Board. CTED cannot approve reimbursement requests until

the loan agreement/contract is executed.

L&I WA Department of Labor and Industries.

ODW WA Department of Health's (DOH) Office of Drinking Water.

Prevailing Wages The hourly wage, usual benefits and overtime, paid in the

largest city, in each county, to the majority of workers, laborers, and mechanics. Prevailing wages are established by the Washington State Department of Labor and Industries and U.S. Department of Labor for each trade and occupation employed in the performance of public work. They are established separately for each county and are reflective of

local wage conditions.

Project Report and Related Construction Documents

Prior to starting construction, the DOH requires DWSRF ARRA borrowers to submit these documents for project review. CTED cannot approve construction reimbursement requests until DOH has approved these documents.

PWB Washington State Public Works Board.

PWeB The Public Works Board's online contract management system

that borrowers use for all the aspects of managing their

DWSRF ARRA loan agreements/contracts.

Quarterly Reports CTED requires that all borrowers with open projects to submit

quarterly progress reports through the Public Works Board

PWeB online contract management system.

Section 106

Cultural/Historical Review

The federal requirement that, prior to construction, any impacts to cultural resources be minimized or mitigated. DOH approves the completion of the process. No construction draw reimbursements can be made until this process is completed.

SBA United States Small Business Association.

Subcontractor(s) Contractor(s) that are hired by the general contractor for labor,

supplies, or services to complete the scope of work of the

construction project.

Suspension and Debarment Federal suspension and debarment actions prevent companies

and individuals from participating in government contracts, subcontracts, loans, grants and other assistance programs. Searches on contractors who have been suspended or debarred from federal contracts can be conducted at www.epls.gov.

DBE

Means Disadvantaged Business Enterprise. It is composed of:

- Minority Business Enterprise (MBE)
- Women's Business Enterprise (WBE)
- Small Business Enterprise (SBE)
- Small Business in a Rural Area (SBRA)
- Labor Surplus Area Firm (LSAF)
- Historically Underutilized Business (HUB) Zone Small Business Concerns
- Other entities meeting EPA's DBE Rule criteria.

Attachment A. More Information on the Washington State and Federal Prevailing Wage Requirements

ARRA Prevailing Wage Reference:

ARRA, Section 1606. Wage Rate Requirements:

"Notwithstanding any other provision of law and in a manner consistent with other provisions in this Act, all laborers and mechanics employed by contractors and sub contractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to this Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (64 Stat. 1267; 5 U.S.C.App.) and section 3145 of title 40, United States Code."

State Prevailing Wage Reference:

RCW 39.12. State Prevailing Wages on Public Works
Refer to http://apps.leg.wa.gov/Rcw/default.aspx?Cite=39.12.

Links to Wage Information:

Federal Prevailing (Davis Bacon) Wage Determinations OnLine

http://www.wdol.gov/

State Prevailing Wage Determinations OnLine

The main L&I web page is at this URL (Google "lni"):

http://www.lni.wa.gov/

Click on "Business Links;" Click on "Find Prevailing Wage Information;" (under the "Trades and Licensing" heading). This takes you to the Prevailing Wage site.

The L&I Prevailing Wage web site can be found at this URL:

http://www.lni.wa.gov/TradesLicensing/PrevWage/default.asp

Look up the prevailing wage rates at this URL:

http://www.lni.wa.gov/TradesLicensing/PrevWage/WageRates/default.asp

The information on the Statement of Intent to Pay Prevailing Wages form and the Affidavit of Wages Paid form can be found at this URL:

http://www.lni.wa.gov/TradesLicensing/PrevWage/IntentAffidavits/default.asp

Alternate combined Intent/Affidavit forms for small & limited work:

http://www.lni.wa.gov/TradesLicensing/PrevWage/IntentAffidavits/SmallWorks/default.asp

The site to actually sign on and file the forms on-line is: http://secureaccess.wa.gov/

Scope of work descriptions describing the work (nature & tasks) performed by different trade and occupation classifications can be found at this URL:

http://www.lni.wa.gov/TradesLicensing/PrevWage/WageRates/IsPrevWageJob/default.asp

A booklet on the Washington State Prevailing Wage law, RCW 39.12 at this URL: http://www.lni.wa.gov/FormPub/Detail.asp?DocID=2061 or at: http://www.lni.wa.gov/IPUB/700-032-000.pdf

Prevailing wage law, Chapter 39.12 RCW: http://apps.leg.wa.gov/RCW/default.aspx?cite=39.12

Prevailing wage rules, Chapter 296-127 WAC: http://apps.leg.wa.gov/WAC/default.aspx?cite=296-127

Prevailing wage policies and determinations: http://www.lni.wa.gov/TradesLicensing/PrevWage/Policies/default.asp

WA State General Wage Decision by County Index: http://www.gpo.gov/davisbacon/wa.html

Attachment B. Employment Security Department (ESD) Job Listing Instructions

The attached pages include a memo from the Office of the Governor, model language, instructions on how to list jobs on the ESD site, and a list of frequently asked questions and answers.

CHRISTINE O. GREGOIRE
Governor



P.O. Box 40002 • Olym pia, Washington 98504-0002 • (36 0) 902-4111

May 15, 2009

TO:

Cabinet members

FROM:

Cindy Zehnder, Chief of Staff

SUBJECT:

Listing Recovery Act jobs with the Employment Security Department

Every day Washington residents contact the Governor's Recovery Team — often after contacting every other public agency or legislative office they can think of — to get help in coping with our painful economic slump. In many cases they are calling because they need a job. We hear very frequently from unemployed people who see the American Recovery & Reinvestment Act and the projects it will support in Washington as offering one of their few remaining opportunities to rejoin the labor force and preserve their families' economic independence.

As we administer the Recovery Act in Washington, one of our critical responsibilities is to help the people of our state take advantage of the job opportunities that are created when employers establish new positions or re-fill vacant ones. And before people can seize these opportunities, they must be able to learn about them quickly and conveniently.

To that end, Governor Gregoire has directed the Employment Security Department to work with her Recovery Team and all executive branch agencies to ensure that job opportunities associated with the Recovery Act are publicized and filled through the state's WorkSource system. This will not only provide a point of focus for job-seekers, but will offer valuable help to employers and enhance the state's ability to track and report the tangible benefits of the Recovery Act in our state.

Employment Security operates a centralized system for listing job openings and reporting hiring results. The department also can pre-screen candidates to identify unemployed workers who qualify for these jobs.

Beginning immediately, the Governor is directing agencies – and strongly encouraging local and regional organizations that administer Recovery Act funds – to take the following steps:

• State agencies that award contracts or grants for ARRA-funded projects must require the contractors, sub-contractors and/or grantees to list their job openings through Employment Security and report their hiring results. Model language to include in your contracts is enclosed. The only exceptions to this requirement are contracts for jobs that are filled through union hiring halls.

• State agencies also must list their own ARRA-funded job openings with Employment Security and report their hiring results.

Employment Security has established a special Recovery Act business unit to work with local WorkSource offices on communication and recruiting. You may contact the business unit at 877-453-5906, 360-438-4849, or <u>ARRA@esd.wa.gov</u>. Staff will provide additional information and help answer your questions.

Thank you for your cooperation as we move forward with this critical effort.

Copies:

State legislators

Executive directors:

Association of Washington Counties Association of Washington Cities Washington Public Ports Association

Washington PUD Association

Washington Association of School Administrators

Council of Presidents

Puget Sound Regional Council Workforce Development Councils

Enclosures:

Model language for ARRA-funded RFP's and contracts

How to list ARRA jobs with the Employment Security WorkSource system

Frequently asked questions

Model language for RFPs and contracts funded by The American Recovery & Reinvestment Act (ARRA)

Suggested language for use by Washington state departments in Requests for Proposals, grant solicitations, contracts or grants funded with ARRA funds:

Language for a Request for Proposal (RFP) or similar solicitation

This contract will be paid for with federal stimulus funds. The federal government requires the state to report the number of jobs created and/or retained by stimulus-funded projects. If you are awarded a contract or grant as a result of this solicitation, you may recruit by any means you prefer, but you (and your sub-contractors, if any) must list and report any jobs retained or created with the WorkSource system (affiliated with the Employment Security Department). WorkSource also will assist by referring you with pre-screened candidates to the contractor, but the contractor retains all hiring discretion.

For more information, contact the Employment Security Department's ARRA Business Unit at 877-453-5906 (toll-free), 360-438-4849 or <u>ARRA@esd.wa.gov</u>.

Contract language

This contract is funded with federal stimulus funds (under the American Recovery & Reinvestment Act), which has strict reporting requirements for funds spent and jobs created or retained. All job openings created by the contractor for this project must be listed with the WorkSource system (an affiliate of the Employment Security Department) before hiring; all hiring decisions also must be reported to WorkSource. In addition, all sub-contractors hired by the contractor also must be required to list jobs and report hiring results to WorkSource. Existing contractor or sub-contractor employees who are retained using funds from this project also must be reported to WorkSource.

WorkSource will pre-screen and refer qualified job candidates for the contractor's consideration. The contractor also has the discretion to use other, additional recruitment systems and retains the right to make all hiring decisions.

To begin the listing and reporting process, contact the ARRA Business Unit at 877-453-5906 (toll-free), 360-438-4849 or <u>ARRA@esd.wa.gov</u>.

How to list ARRA jobs with the Employment Security (ESD) WorkSource system

To help with the increased transparency and accountability that are required under the American Recovery & Reinvestment Act (ARRA), ESD's ARRA Business Unit will be the central point of contact for state agencies and their contractors for listing and tracking ARRA-funded jobs.

Step 1: State agencies notify ESD about ARRA-funded contracts

Within 2 days after awarding an ARRA-funded contract, state agencies should provide the following information to Employment Security's ARRA Business Unit:

- Name, phone number and address of contractor
- Title or short description of the contract

Report this information to ESD's ARRA Business Unit at <u>ARRA@esd.wa.gov</u>, 877-453-5906 (toll-free) or 360-438-4849. (Employment Security will use the information to verify that contractors comply with the requirement stated in Step 2.)

Step 2: List ARRA-funded jobs with ESD's WorkSource system

State agencies, contractors and sub-contractors should contact the ARRA Business Unit to begin the process of listing their ARRA-funded jobs with the WorkSource system. The ARRA Business Unit may be reached at 877-453-5906 (toll-free), 360-438-4849 or <u>ARRA@esd.wa.gov</u>.

Here's what we'll do with the information: The ARRA Business Unit will relay the information to a business outreach lead at a WorkSource office in the employer's community. The business outreach lead will contact the employer to obtain the information necessary to list the job/s (create a "job order"), and to discuss the employer's recruitment needs and the services available through WorkSource.

The WorkSource business outreach lead will search the agency's database for qualified applicants (based on job-skill requirements), screen potential applicants, and refer selected candidates to the employer for consideration. (Employers retain the right to use other or additional recruitment systems, and they make all hiring decisions.)

Step 3: Report hiring information

After completing the hiring process, the employer should contact the WorkSource business outreach lead to "close" the job order and provide the following information:

- Job title
- Number of people hired
- Starting wage and hours

This information will be used in reports and status updates to the governor, the federal government and the public.



Frequently asked questions for ARRA employers

Q1. What services can I get when I list jobs with WorkSource?

A. WorkSource staff screens and refers job seekers based on how well their skills meet your job requirements. The screening is done broadly or narrowly, depending on how many people you want to interview.

WorkSource also can help you with free job advertising, pay-rate information, tax credits and information on employment laws and regulations. We're committed to helping your business succeed.

Q2. What screening and assessment of skills does WorkSource conduct?

A. We conduct a variety of screening and assessment. Contact your local WorkSource center to ask what assessment services are provided.

Q3. If the position requires a certain skill level, can WorkSource test applicants for math and reading levels or typing speed?

A. WorkSource staff will pre-screen applicants based on the qualifications that you need. Ask your WorkSource staff person about their ability to assess certain skills required for the position.

Q4. Can we conduct interviews at WorkSource?

A. You can use space at WorkSource for mass application sessions, one-on-one interviews, or even group orientations. Contact your local WorkSource to check availability.

Q5. What is the anticipated hiring time?

A. We recommend you plan ahead (7-10 days), although you may hire when you choose. The job will be listed for you right away.

Q6. What if WorkSource doesn't have job seekers with the skills and abilities that match our needs?

A. WorkSource staff will look first for qualified local applicants. If no one is available, then the search is expanded to include other areas to see if applicants are willing to commute or relocate. During this recession, there is an unprecedented pool of qualified applicants. Our matching system has the unique capabilities to match skilled job seekers with available jobs.

Q7. Is WorkSource able to coordinate job fairs or hiring events?

A. Yes, WorkSource often coordinates large job fairs and targeted hiring events. Your local WorkSource staff can arrange the details such as date, availability of space, and the amount of time they need to help coordinate your hiring event.

Q8. Do I have to list jobs and report hiring information to WorkSource?

A. Yes. Even if you hire someone who already works for you in a different position, report the hire for contract requirements.

Q9. Can I list my job opening with other sources like temp agencies or run a classified ad in the newspaper at the same time?

A. You may recruit as broadly as you like. Just remember that a requirement of your contract is to post contract-funded job openings with your WorkSource business representative and report all hiring information.

Q10. What information is being tracked by WorkSource?

A. WorkSource tracks information about jobs listed, job candidates referred and the job openings filled.

Q11. Who is the information being provided to?

A. Participation and performance information is provided by the Employment Security Department to the U.S. Department of Labor. It also is being reported to the Governor, who is required by the federal Office of Management and Budget to report about jobs preserved and created during the recession.

Q12. How long after placing the job order with WorkSource will it take before I can interview applicants?

A. It could happen the same day if there are interested, qualified job seekers who apply right away. Typically, it may take a few days.

Q13. What if I already have a job candidate (or a list of candidates), why do I have to list my jobs with WorkSource?

You can hire anyone you want, but you need to report it to us. Listing your stimulus-funded jobs with WorkSource enables us to track how many jobs are created and filled. We will relay the information to the governor and the federal government, who are documenting the effects of the stimulus funding.

Attachment C. Record of Employee Interview Form

Attached is the Record of Employee Interview form, provided by U.S. Department of Housing and Urban Development, Office of Labor Relations.

Record of Employee Interview

U.S. Department of Housing and Urban Development Office of Labor Relations

OMB Approval No. 2501-0009 (exp. 04/30/2005)

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

The information collected in recording interviews with construction laborers and mechanics is to assist in achieving compliance wiht the prevailing wage requirements of the Davis-Bacon and related Acts.

Sensitive Information. The information collected on this form is considered sensitive and is protected by the Privacy Act. The Privacy Act requires that these records be maintained with appropriate administrative, technical, and physical safeguards to ensure their security and confidentiality. In addition, these records should be protected against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom the information is maintained.

Project Number	Contractor or Subcontractor (Employer	·)		
Project Name				
1. Name of Employee	2. Home Address and Zip Code			
3a. Last date you worked on project before today 3b. Number of hours work	ed on project on that date 4. Your hour	ly pay rate		
5. Your job classification(s) (list all) (continue any answers on a separate she	eet if necessary)	Apprentio	ce? Ye	s No
6. Your duties				
7. Tools or equipment used				
Paid at least time and one-half for all hours worked in excess of 40 in a we (If overtime premium pay is not required, enter "inapplicable")	eek?		Yes	No
9. Ever threatened, intimidated, or coerced into giving up any part of pay?			Yes	No
10. Duties observed by interviewer	Conform to	Classification?	Yes	No
11. Remarks (Continue on a separate sheet if needed)				
12.Signature of Interviewer		Date of interview	W	
Payroll Examination				
13.Remarks (Continue on a separate sheet if needed)				
14.Signature of Payroll Examiner		Date		

Attachment D. Weekly Payroll Review Checklist and U.S. DOL Certified Payroll Form

WEEKLY PAYROLL REVIEW CHECKLIST

Weekly payrolls must be submitted by the general contractor and all subcontractors no later than seven working days following the pay period. Each payroll should be sequentially numbered and include the following:

<u>Employer Information</u>: Name and address of general contractor or subcontractor, as well as the IRS Employer ID number.

<u>Employee Information</u>: Each worker's address and social security number must be reported on the first payroll on which his or her name appears. The address is not required on subsequent payrolls unless the worker's address had changed. In addition, the wage classification for each employee must be listed.

<u>Classification and Wage Rates</u>: Compare the classification and wage rates reported on the payroll with the federal and state wage determinations received to ensure the general `contractor or subcontractor is paying the higher of the two. Review the payroll for incidence of overtime (in excess of 40 hours in one week) and appropriate payment of time and one-half for overtime hours worked.

If any apprentices or trainees are reported, a copy of both the approved certificate of program registration and the employee's certification must be attached to the first payroll on which the apprentice or trainee's name appears.

If an employee worked in more than one classification during the week being reported, his/her name should appear twice, once to report the hours worked in each classification.

Computations: Payroll computation should be spot-checked for math errors.

<u>Deductions</u>: Deductions should be identified as to type. The first time a certified payroll shows that voluntary deductions have been taken out of an employee's wages, a copy of the employees written authorization to the general contractor authorizing those deductions must be provided with the certified payroll. The payroll reviewer should always check for the written authorization when applicable.

Also, anytime it is noted that an unusually large amount is being held for routine deductions such as FICA, state industrial, etc., further investigation should be accomplished.

<u>Fringe Benefits</u>: Where fringe benefits are paid into benefit plans, the block 4(a) on the back of the certified payroll should be marked

<u>Signature</u>: The statement of compliance, whether printed on the payroll form (as on Form WH-347) or attached to another type of payroll form (such as a computer printed payroll), must be signed in ink by the owner, officer or designated employee (such as a bookkeeper). (The signature of anyone other than the owner or officer must be authorized in writing.) Signature authorization, for persons other than principal, should be submitted with the first payroll signed by such an agent.

U.S. Department of Labor

PAYROLL

Employment Standards Administration Wage and Hour Division

(For Contractor's Optional Use; See Instructions at www.dol.gov/esa/whd/forms/wh347instr.htm)

Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

g		Persons are not	requir	red to respond to	the co	llection d	of information	unless it disp	olays a currentl	y valid OM	B control nui	mber.			Rev. Dec	. 2008
NAME OF CONTRACTOR OR SUBCONTR	RACTOR						ADDRESS								OMB No. Expires:	: 1215-0149 12/31/2011
PAYROLL NO.		FOR WEEK ENDIN	G				PROJECT	AND LOCATION	ON				PROJECT (OR CONTRAC	T NO.	
(1)	(2) SNOI FDING	(3)	OR ST.	(4) DAY A	ND DA	TE	(5)	(6)	(7)			DEC	(8) DUCTIONS			(9) NET
NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	NO. OF WITHHOLDING EXEMPTIONS	WORK CLASSIFICATION	0T. C	HOURS WORK	(ED EA	CH DAY	TOTAL HOURS	RATE OF PAY	GROSS AMOUNT EARNED	FICA	WITH- HOLDING TAX		1	OTHER	TOTAL DEDUCTIONS	WAGES PAID FOR WEEK
			0													
			0													
			s													
			0													
			S													
			s													
			0													
			s													
			0 S													
			0													
			s													
			0													
			s													

While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contractors and subcontractors performing work on Federally financed or assisted construction contract to the information collection contract to the information collectin collection contract to the information collection collection co (40 U.S.C. § 3145) contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) regulations at 29 C.F.R. § 5.5(a)(3)(ii) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

Public Burden Statement

We estimate that is will take an average of 55 minutes to complete this collection, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, ESA, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, N.W. Washington, D.C. 20210

Date	-	
I.		
I,(Name of Signation	tory Party)	(Title)
do hereby state:		
(1) That I pay or supervise	e the payment of the persons emplo	oyed by
	(Contractor or Subcontractor)	on the
(Building or Wo		ing the payroll period commencing on the
,	,	day of,,
all persons employed on said		ekly wages earned, that no rebates have
		from the ful
	(Contractor or Subcontractor)	
from the full wages earned by a 3 (29 C.F.R. Subtitle A), issued	ny person, other than permissible d	ve been made either directly or indirectly deductions as defined in Regulations, Part e Copeland Act, as amended (48 Stat. 948 escribed below:
(2) That any payrolls othe	rwise under this contract required t	to be submitted for the above period are

- (2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.
- (3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.
 - (4) That:
 - (a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS
 - in addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

 Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION
REMARKS:	
NAME AND TITLE	SIGNATURE
	E STATEMENTS MAY SUBJECT THE CONTRACTOR OR SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE

Attachment E. Memorandum on Implementation of Buy American Provisions of P.L. 111-5, the "American Recovery and Reinvestment Act of 2009"

Attached is the EPA memorandum on the implementation of Buy American provisions.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

OFFICE OF WATER

ARRA 09-1

04/28/2009

MEMORANDUM

SUBJECT:

Implementation of Buy American provisions of P.L. 111-5, the "American

Recovery and Reinvestment Act of 2009"

FROM:

James A. Hanlon, Director

Office of Wastewater Management (4201M)

Cympial Dougherty, Director

Office of Ground Water and Drinking Water (4601M)

TO:

Water Management Division Directors

Regions I - X

P.L. 111-5, the "American Recovery and Reinvestment Act of 2009" (ARRA), provides significant levels of funding for States to finance high priority infrastructure projects needed to ensure clean water and safe drinking water. The Act also includes "Buy American" provisions in section 1605 that require Clean Water State Revolving Loan Fund (CWSRF) and Drinking Water State Revolving Loan Fund (DWSRF) assistance recipients of these ARRA funds to use domestic iron, steel and manufactured goods that are produced in the United States.

EPA's foremost expectation is that assistance recipients will use American iron, steel and manufactured goods throughout their ARRA-funded projects. Section 1605 also, however, sets forth certain circumstances under which a federal agency may determine to waive Buy American requirements. In addition, Section 1605 requires the Buy American requirements to be applied consistent with U.S. obligations under international agreements. That means that where a procurement is covered by an international agreement, the Buy American requirement would not be applied to the countries that are subject to the relevant agreement(s). The approach described below explains how EPA will implement these provisions.

The legislative history and Congressional intent expressed in the record for the ARRA make clear that the priority of Congress is to provide capital funding to projects as quickly as possible to create jobs and stimulate both local and national economies. In addition, the ARRA also includes other specific requirements like the Buy American

provision of section 1605 and the requirement that all water infrastructure projects be under contract or under construction by February 17, 2010. EPA's intention in developing the approach described here is to effectively and efficiently implement this full range of ARRA requirements.

Implementation

A waiver may be provided if EPA determines that (1) applying these requirements would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel, and manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent. This requirement has been included as a grant condition in all EPA capitalization grants, and will be a condition in all loan and grant agreements provided by States to local recipients.

On April 23, 2009, the Office of Management and Budget (OMB) issued Interim Final Guidance for several aspects of ARRA, including the Buy American Requirement under Section 1605. The full text of this Guidance is at http://edocket.access.gpo.gov/2009/pdf/E9-9073.pdf. Definitions herein have incorporated the relevant text from the OMB Guidance, and the term and condition specified in the OMB Guidance at 176.140 (page 18454) will be incorporated as an award term of ARRA grants from EPA.

In order to implement the Buy American provisions of the ARRA, EPA has developed an approach to allow for effective and efficient implementation to allow projects to proceed in a timely manner. The framework described below will allow assistance recipients to apply for waivers directly to EPA. Pursuant to the ARRA, EPA has the responsibility to make findings and determinations as to the issuance of waivers to the Buy American provisions.

With regard to the requirement to adhere to U.S. obligations under international agreements, based on discussions with OMB officials and OMB's "Updated Implementation Guidance," this provision only applies to direct procurement by the entities listed in the appendix of OMB's Interim Final Guidance or the Federal government, and does not apply to procurement initiated by local entities (SRF assistance recipients), unless they are listed in the appendix.

Definitions

The following terms are critical to the interpretation and implementation of the Buy American provisions of the ARRA and apply to the process described in this memorandum:

<u>Steel</u>: An alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements. Production in the United States of the iron or steel used

in the project requires that all manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives. These requirements do not apply to iron or steel used as components or subcomponents of manufactured goods used in the project. (This and the following definition was drawn from the OMB Guidance of April 3, 2009, at 176.70(a)(2)(ii) and 176.140(a).)

<u>Manufactured Good</u>: "Manufactured good" means a good brought to the construction site for incorporation into the building or work that has been--

- (1) Processed into a specific form and shape; or
- (2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

There is no requirement with regard to the origin of components or subcomponents in manufactured goods, as long as the manufacture of the goods occurs in the United States.

<u>Reasonably Available Quantity</u>: The quantity of iron, steel, or the relevant manufactured good is available or will be available at the time needed and place needed, and in the proper form or specification as specified in the project plans and design.

<u>Satisfactory Quality</u>: The quality of iron, steel, or the relevant manufactured good as specified in the project plans and designs.

Assistance Recipient: A borrower or grantee that receives funding from a State CWSRF or DWSRF program.

Step-By-Step Waiver Process

Application by Assistance Recipient

Each local entity that receives ARRA water infrastructure financial assistance is required by section 1605 of the ARRA to use American made iron, steel, and manufactured goods in the construction of its project. However, if it is one of the entities listed in the appendix to Appendix 9 of the OMB Updated Implementing Guidance, it must allow for the use of iron, steel, or manufactured goods from a country covered by a relevant international agreement. If that is not possible, or if the recipient falls under one of the categories below, the recipient may request a waiver. Until a waiver is granted by EPA, the Buy American requirements stand, except as noted above with respect to countries covered by international agreements.

The waiver process begins with the SRF assistance recipient. In order to fulfill the requirements of the ARRA, the assistance recipient must in good faith design the project (where applicable) and solicit bids for construction with American made iron, steel, and manufactured goods. It is essential that the assistance recipient include the ARRA's Buy American terms in any request for proposals or solicitations for bids, and in

all contracts (see Appendix 3 for sample contract language). The assistance recipient may seek a waiver at any point before, during, or after the bid process if one or a combination of three conditions is met:

- 1. Iron, steel, and manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality;
- 2. Inclusion of iron, steel, and manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent; or
- 3. Applying the Buy American requirements of ARRA would be inconsistent with the public interest.

EPA believes that most waivers will likely come forward at two points in a project: first, based on the design where the assistance recipient identifies key materials (iron and steel) or equipment (manufactured goods) that are not produced in sufficient quantities domestically, or, second, after evaluation by prospective bidders and their consultation with suppliers determines that iron, steel, or manufactured goods as required by the design are not produced in sufficient quantities domestically. An assistance recipient could potentially request waivers at either or both points in the project. It is also possible to request a waiver after bids are opened or after construction has initiated. EPA strongly recommends, if a waiver is necessary, initiating the request before construction has initiated.

Consistent with the direction of the OMB Guidance at §176.120, EPA will expect that requests submitted after the signing of the construction contract will include an explanation of why the request was submitted at that late date. Late submissions that are based on the grounds of lack of reasonably foreseeable circumstances that led to the request, where sufficiently documented, will be considered as if timely submitted.

Late requests that are based on grounds that the assistance recipient would be reasonably expected to foresee will, before consideration of the underlying waiver request, be subject to a balancing. This balancing will consider whether the public interest in expeditious construction under ARRA does or does not outweigh the need for full, timely, and good faith compliance with the Buy American provision according to the grounds set forth in ARRA and in applicable federal guidance and information.

Proper and sufficient documentation must be provided by the assistance recipient. A checklist detailing the types of information required for a waiver to be processed is attached as Appendix 1.

Additionally, it is strongly encouraged that assistance recipients hold pre-bid conferences with potential bidders. A pre-bid conference can help to identify iron, steel, and manufactured goods needed to complete the project as described in the plans and specifications that may not be available from domestic sources and the need to seek a waiver prior to bid, and can help inform the recipient on compliance options.

In order to apply for a project waiver, the assistance recipient should email the request in the form of a Word document (.doc) to the Regional waiver email address listed in the chart below. Please include all of the information as shown in the checklist in Appendix 1. The Regional office will send a copy to the State contact.

Chart I

If the assistance recipient is located in	Send the waiver request to
Region 1: ME, NH, VT, MA, RI, CT	region1waiver@epa.gov
Region 2: NY, NJ, PR, VI	region2waiver@epa.gov
Region 3: PA, MD, DE, VA, WV, DC	region3waiver@epa.gov
Region 4: NC, SC, KY, TN, AL, MS, GA, FL	region4waiver@epa.gov
Region 5: OH, IN, MI, MN, WI, IL	region5waiver@epa.gov
Region 6: TX, OK, AR, LA, NM	region6waiver@epa.gov
Region 7: IA, KS, NE, MO	region7waiver@epa.gov
Region 8: CO, WY, UT, SD, ND, MT	region8waiver@epa.gov
Region 9: CA, NV, AZ, HI, GU, AS, NMT	region9waiver@epa.gov
Region 10: WA, OR, ID, AK	region10waiver@epa.gov

Participation by State Program

Section 1605 does not authorize a formal role for the States in the waiver process. However, any State may at its discretion undertake functions that can make important contributions to advance the speed, efficiency, and effectiveness of the waiver process.

One such potential contribution State SRF programs may offer is an initial screening of waiver requests, to assess the sufficiency of the information provided by the assistance recipient in order to advance or facilitate review by the EPA Region. To assist the State in this assessment, EPA has provided a checklist (Appendix 1) that provides a framework for examining the documentation presented in support of the waiver request.

A key consideration for States in their decision as to how to participate in the waiver process is that EPA envisions a short time frame for this process – no more than 3 business days may elapse from filing of the waiver application to correspondence from the State to the Region. States wishing to participate actively in the assessment of waiver requests should consult closely with the Regional office to ensure this participation is managed within the overall time frame for the process.

Evaluation by EPA Regional Offices

After receiving an application for waiver of the Buy American provisions, the Regional office must use the checklist in Appendix 2 to determine whether the application properly and adequately documents and justifies the statutory basis cited for the waiver – that it is quantitatively and qualitatively sufficient – and to determine whether or not to grant the waiver. The checklist provides information to Regions with

regard to a waiver on the basis of unavailability of a product or material, or of substantial cost increases.

In the event that the Regional office in consultation with the Office of Regional Counsel (ORC) finds that adequate documentation and justification has been submitted, the Regional Administrator may grant a waiver to the assistance recipient. In any event, the Region should notify the assistance recipient that a waiver request has been approved or denied no later than 2 weeks from the date of receipt of a complete waiver request. Granting such a waiver is a 5-step process:

- 1. Evaluation After receiving an application for waiver of the Buy American provisions, the Regional office must use the checklist in Appendix 2 to determine whether the application properly and adequately documents and justifies the statutory basis cited for the waiver that it is quantitatively and qualitatively sufficient and to determine whether or not to grant the waiver.
- 2. Coordination No later than 3 days prior to the submission of a notification of a proposed waiver approval to the Assistant Administrator for the Office of Administration and Resources Management (OARM) for concurrence, the Region must notify the Cross-Agency Coordination Working Group described below that a waiver review is complete, along with a copy of the proposed notification.
- 3. Concurrence Prior to approving a project waiver, the Regional Administrator must obtain the concurrence of the Assistant Administrator for OARM, as required by the Administrator's March 31, 2009 delegation of approval authority for exceptions (waivers) to the requirements of ARRA section 1605(a). Please send waivers for concurrence to oarmwaivers@epa.gov.
- 4. Signature of waiver approval by the Regional Administrator As soon as the waiver is signed and dated, the Region must notify the State and assistance recipient. This should take place no later than 2 weeks after the receipt of a complete waiver request from an assistance recipient.
- 5. Publication by Regional office of notification of issuance of waiver in the Federal Register (Appendix 4 contains a draft Federal Register notice).

When notification of the issuance of a waiver is published in the Federal Register, the Regional office should send appropriate information to Headquarters for a link to the Federal Register notice to be posted on EPA's Recovery.gov website.

Cross-Agency Coordination Working Group

EPA will establish a national coordination working group composed of representatives from our Offices in the two SRF programs, and from the Regions. This group will have two principal functions:

- 1. To provide oversight of the national waiver process through consultation, quality control, and direction as necessary to clarify and resolve policy issues raised on waiver requests.
- 2. To identify the potential for appropriate national or (U.S. geographical) regional, categorical waivers to be issued based on similar circumstances identified in the detailed justifications for a waiver or waivers. Such categorical waivers may be based on one or a combination of the grounds for a waiver specified in ARRA section 1605(b), as may be appropriate to the detailed justifications available or developed.

Special Circumstances

Under certain special circumstances, EPA may grant a waiver of the Buy American provisions under the authority to waive such provisions if application of such provisions would be inconsistent with the public interest. A determination to grant a waiver of the Buy American provisions based solely on inconsistency with the public interest (as authorized under ARRA section 1605(b)(1)) must be made with EPA Office of Water consultation due to the possible national implications of such a waiver, except in any particular categories of "public interest" cases for which EPA has defined in national information, policy, or guidance the applicable conditions and the specific elements of the individual justification that must be provided. For the Regional office to consider these types of waiver requests, it must find that the conditions defined in the national information, policy, or guidance, and that the elements, in scope and detail, of the information provided to justify the request, are both present as required. If these are both present, the Regional office can then determine whether the justification offered is sufficient, within the terms set forth in the applicable information, policy, or guidance, to grant the waiver. This application will be sent to the same email address as mentioned above in Chart 1, however the requester should indicate in the subject line that the request is for a public interest waiver.

EPA has issued a national "public interest" waiver, signed by Acting Assistant Administrator Michael Shapiro on April 1, 2009, for eligible projects for which a Clean or Drinking Water State Revolving Fund (SRF) has concluded or will conclude an assistance agreement using ARRA funds to refinance a debt incurred on or after October 1, 2008, and before February 17, 2009. The waiver was based on the SRF appropriations provision in ARRA Title VII authorizing refinancing of such debts: "The imposition of ARRA's Buy American requirements on [such] projects would in all cases entail time-consuming delay and thus displace the "shovel ready" status of these projects[, and] would frustrate Congress' specific and explicit intent to allow for the use of ARRA funds to refinance those projects through the SRFs, as well as for expeditious construction generally."

National Waivers

EPA reserves the right to issue national waivers that may apply to particular classes of assistance recipients, particular classes of projects, or particular categories of iron, steel, or manufactured goods. As stated in the discussion of the "Cross-Agency Coordination Working Group," above, EPA may develop national or (U.S. geographic) regional categorical waivers through the identification by that Working Group of similar circumstances in the detailed justifications presented to one or more Regions in a waiver request or requests. EPA may issue a national waiver based on policy decisions regarding the public's interest or a determination that a particular item is not produced domestically in reasonably available quantities or of a sufficient quality. In such cases, EPA may determine it is necessary to issue a national waiver. All national waivers will be issued by EPA Headquarters.

Split Funding

Based on their intended use plans many States intend to fund projects with "split" funding, from ARRA and the base SRF program. Based on the ARRA language in section 1605, which requires that American iron, steel, and manufactured goods be used in any project receiving ARRA funding, EPA has concluded that any project that is funded in whole or in part with ARRA funds, must comply with the Buy American provisions. A "project" consists of all construction necessary to complete the building or work regardless of the number of contracts or assistance agreements involved so long as all contracts and assistance agreements awarded are closely related in purpose, time and place. This precludes the intentional splitting of ARRA projects into separate and smaller contracts or assistance agreements to avoid Buy American coverage on some portion of a larger project, particularly where the activities are integrally and proximately related to the whole. However, there are many situations in which major construction activities are clearly undertaken in segregable phases that are distinct in purpose, time, or place, in which case, separate contracts or assistance agreement for ARRA and base funding would carry separate requirements.

If you have any questions concerning the contents of this memorandum, you may contact us, or have your staff contact George Ames, Chief, State Revolving Fund Branch, Municipal Support Division, at (202) 564-0661, or Charles Job, Chief, Infrastructure Branch, Drinking Water Protection Division, at (202) 564-3941.

Attachments

Appendix 1: Information Checklist for Waiver Request

The purpose of this checklist is to ensure that all appropriate and necessary information is submitted to EPA. Please review this checklist carefully and provide all required information to EPA. This checklist is for informational purposes only and does not need to be included as part of a waiver application.

Items		\ \	Notes
Waiver request includes the following information: Description of the foreign and domestic construction materials Unit of measure Quantity Price Time of delivery or availability Location of the construction project A detailed justification for the use of foreign construction materials Waiver request was submitted according to the instructions in the memorandum Assistance recipient made a good faith effort to solicit bids for domestic construction materials/manufactured goods, as demonstrated by language in requests for proposals, contracts, and communications with the prime contractor	monstrated	,	
Waiver request includes the following information: Price Comparison Worksheet shown in Table 1 Relevant excerpts from the bid documents used by the contractors to complete the Price Comparison Worksheet Supporting documentation indicating that the contractor made a reasonable survey of the market, such as a description of the process for identifying suppliers and a list of contacted suppliers	iption of the		
Availability Waiver request includes the following supporting documentation necessary to demonstrate the availability, quantity, and/or quality of the materials for which the waiver is requested: — Supplier information or pricing information from a reasonable number of domestic suppliers indicating availability/delivery date for construction materials — Documentation of the assistance recipient's efforts to find available domestic sources, such as a description of the process for identifying suppliers and a list of contacted suppliers. — Project schedule	or quality of ity/delivery ity process		
 Relevant excerpts from project plans, specifications, and permits indicating the required quantity and quality of construction materials Waiver request includes a statement from the prime contractor confirming the non-availability of the domestic construction materials for which the waiver is sought Has the State received other waiver requests for the materials described in this waiver request, for comparable projects? 	construction in materials		

Table 1: Foreign and Domestic Construction Materials Price Comparison Worksheet

the project as designed. In column b) enter the cost estimate for each component as supplied by domestic sources. In column c) enter Instructions: To be completed by the prime contractor. In column a), enter all iron, steel, and manufactured goods required to build the cost estimate for each component for which waivers are requested, as supplied by foreign sources.

(c) Price – Foreign Material*	(e) Total Foreign Project Cost:
(b) Price – Domestic Material*	(d) Total Domestic Project Cost:
Quantity	
Unit of Measure	-
(a) Material	2

^{*}Include all delivery costs to the construction site

Appendix 2: Regional Review Checklist for Waiver Request

Instructions: To be completed by the EPA Regional Office. Review all waiver requests using the questions in the checklist, and mark the appropriate box as Yes, No or N/A. Marks that fall inside the shaded boxes may be grounds for denying the waiver. If none of your review markings fall into a shaded box, the waiver is eligible for approval if it indicates that one or more of the following conditions applies to the domestic construction material for which the waiver is sought:

1. The iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a

- satisfactory quality.
- The inclusion of iron, steel, and manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

	Review Items	Yes	o _N	N/A	Comments
ٽ .	Cost Does the waiver request include the following information? Date Committee Workshare in Table 1				
	Relevant excerpts from the bid documents from foreign and domestic sources used to complete the Price Comparison				
	Worksheet A sufficient number of bid documents or pricing information from domestic sources to constitute a reasonable survey of				
٠	the market Does the Total Domestic Project Cost indicated in column (d) of the Price Comparison Worksheet exceed the Total Foreign Project Cost indicated in column (e) by more than 25% of the value in column (e)?	# FEEE			I.
₹ (Availability Assistance requires required include quanciting documentation sufficient to chow the availability quantity and/or quality of the				
	boes the waiver request include supporting to continuous attribution of show the availability, quantity, and or quanty of the iron, steel, and manufactured goods for which the waiver is requested?		T)		
	 Supplier information or other documentation indicating availability/delivery date for construction materials Project schedule 				
	 Relevant excepts from project plans, specifications, and permits indicating the required quantity and quality of construction materials 				
٠	Does supporting documentation provide sufficient evidence that the contractors made a reasonable effort to locate domestic supporting such as a description of the process for identifying suppliers and a list of contacted suppliers?				
•	Based on the materials delivery/availability date indicated in the supporting documentation, will the materials be unavailable when they are needed according to the project schedule? (By item, list schedule date and domestic delivery quote date or other				
	relevant information)		9		
•	Is the Region aware of any other evidence indicating the non-availability of the materials for which the waiver is requested? Examples include:		ř.		
	 Multiple waiver requests for the materials described in this waiver request, for comparable projects in the same State Multiple waiver requests for the materials described in this waiver request, for comparable projects in other States 				
	 Correspondence with construction trade associations indicating the non-availability of the construction materials 				
•	Are the available domestic construction materials indicated in the bid documents of inadequate quality compared those required by the project plans, specifications, and/or permits?				ū.

Table 1: Foreign and Domestic Construction Materials Price Comparison Worksheet

the project as designed. In column b) enter the cost estimate for each component as supplied by domestic sources. In column c) enter the cost estimate for each construction material/manufactured good for which waivers are requested, as supplied by foreign sources. Instructions: To be completed by the prime contractor. In column a), enter all iron, steel, and manufactured goods required to build

(c) Price – Foreign Material*	(e) Total Foreign Project Cost:
(b) Price – Domestic Material*	(d) Total Domestic Project Cost:
Quantity	
Unit of Measure	_
(a) Material	

^{*}Include all delivery costs to the construction site

Appendix 3: Sample Buy American Contract Language

THIS IS AN EXAMPLE OF WHAT COULD BE INCLUDED IN ALL CONTRACTS THAT MAY USE ARRA FUNDS. EPA MAKES NO CLAIMS REGARDING THE LEGALITY OF THIS CLAUSE WITH RESPECT TO STATE OR LOCAL LAW. IT IS IMPERATIVE THAT ANY PARTY INSERTING THIS CLAUSE INTO A CONTRACT VERIFY THAT IT IS LEGAL AND ENFORCEABLE ACCORDING TO STATE AND LOCAL LAWS, REGULATIONS, AND ORDINANCES:

The Contractor acknowledges to and for the benefit of the City of ("Purchaser") and the (the "State") that it understands the goods and services under this Agreement are being funded with monies made available by the federal American Recovery and Reinvestment Act of 2009 (ARRA) (or are being made available for a project being funded with monies made available by the federal ARRA) and such law contains provisions commonly known as "Buy American;" that requires all of the iron, steel, and manufactured goods used in the project be produced in the United States ("Buy American Requirements") including iron, steel, and manufactured goods provided by the Contactor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Purchaser and the State that (a) the Contractor has reviewed and understands the Buy American Requirements, (b) all of the iron, steel, and manufactured goods used in the project will be and/or have been produced in the United States in a manner that complies with the Buy American Requirements, unless a waiver of the requirements is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the Buy American Requirements, as may be requested by the Purchaser or the State. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Purchaser or State to recover as damages against the Contractor any loss, expense or cost (including without limitation attorney's fees) incurred by the Purchaser or State resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State or any damages owed to the State by the Purchaser). While the Contractor has no direct contractual privity with the State, as a lender to the Purchaser for the funding of its project, the Purchaser and the Contractor agree that the State is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the State.

Appendix 4: Draft Federal Register Notice

ENVIRONMENTAL PROTECTION AGENCY

Region
ACTION: Notice of waiver of Section 1605 (Buy America requirement) of American Recovery and Reinvestment Act of 2009 (ARRA) for under the Section 1605 waive authority based on the conclusion that [applying these requirements would be inconsistent with the public interest] [iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality] or [inclusion of iron, steel, and manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent] [pick one]
SUMMARY: The EPA is hereby granting a waiver of the Buy America requirements of ARRA Section 1605 under the authority of Section [1605(b)(1) (public interest waiver)] [1605(b)(2) (quantity and quality waiver)] [1605(b)(3) (cost waiver)] [pick one] for This action permits the use of [iron, steel, or manufactured good for which the waiver is provided] in [the project].
for which the waiver is provided] in [the project].
EFFECTIVE DATE:
FOR FURTHER INFORMATION CONTACT: , Office of (XXX) XXX-XXXX or , Office of (XXX) XXX-XXXX, Environmental Protection Agency, [address]
SUPPLEMENTARY INFORMATION: In accordance with ARRA Section 1605(c), the EPA hereby provides notice that it is granting a waiver of the requirements of section 1605(a) of P.L 111-5, Buy America requirements, for [project name and description].
The basis for the nationwide waiver is: [describe the basis, analysis undertaken, and a detailed description of the findings the lead to the decision to grant a waiver]
Authority: P.L. 111-5, section 1605.
Issued on: [date], Regional Administrator, U.S. Environmental Protection Agency, Region [FR Doc. 09-XXXX Filed 3-2X-09] BILLING CODE XXXX-XX-X.

Appendix 5: Sample Certification

FOLLOWING IS A SAMPLE CERTIFICATION THAT AN ASSISTANCE RECIPIENT MAY REQUIRE FROM A CONTRACTOR OR BIDDER. THIS IS ONLY A SAMPLE AND MAY BE USED AT THE DISCRETION OF THE ASSISTANCE RECIPIENT TO ENSURE COMPLIANCE WITH SECTION 1605 OF THE ARRA:

- 1. Identification of American-made Iron, Steel, and Manufactured Goods: Consistent with the terms of the Purchaser's bid solicitation and the provisions of ARRA Section 1605, the Bidder certifies that this bid reflects the Bidder's best, good faith effort to identify domestic sources of iron, steel, and manufactured goods for every component contained in the bid solicitation where such American-made components are available on the schedule and consistent with the deadlines prescribed in or required by the bid solicitation.
- 2. Verification of U.S. Production: The Bidder certifies that all components contained in the bid solicitation that are American-made have been so identified, and if this bid is accepted, the Bidder agrees that it will provide reasonable, sufficient, and timely verification to the Purchaser of the U.S. production of each component so identified.
- 3. Documentation Regarding Non- American-made Iron, Steel, or Manufactured Goods: The Bidder certifies that for any component or components that are not American-made and are so identified in this bid, the Bidder has included in or attached to this bid one or both of the following, as applicable:
 - a. Identification of and citation to a categorical waiver published by the U.S. Environmental Protection Agency in the Federal Register that is applicable to such component or components, and an analysis that supports its applicability to the component or components;
 - b. Verifiable documentation sufficient to the Purchaser, as required in the bid solicitation or otherwise, that the Bidder has sought to secure American-made components but has determined that such components are not available on the schedule and consistent with the deadlines prescribed in the bid solicitation, with assurance adequate for the Bidder under the applicable conditions stated in the bid solicitation or otherwise.
- 4. Information and Detailed Justification Regarding Non- American-made Iron, Steel, or Manufactured Goods: The Bidder certifies that for any such component or components that are not so available, the Bidder has also provided in or attached to this bid information, including but not limited to the verifiable documentation and a full description of the bidder's efforts to secure any such American-made component or components, that the Bidder believes are sufficient to provide and as far as possible constitute the detailed justification required for a waiver under section 1605 with respect to such component or components. The Bidder further agrees that, if this bid is accepted, it will assist the Purchaser in amending, supplementing, or further supporting such information as required by the Purchaser to

request and, as applicable, implement the terms of a waiver with respect to any such component or components.

Attachment F. Certification Regarding Debarment, Suspension, and Other Responsibility Matters

Attached is the EPA Certification Regarding Debarment, Suspension, and Other Responsibility Matters form.



United States Environmental Protection Agency Washington, DC 20460

The prospective participant certifies to the best of its knowledge and belief that it and the principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction: violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification may be ground for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

Typed Name & Title of Authorized Representative	
Signature of Authorized Representative	Date
I am unable to certify to the above statements	s. My explanation is attached

Instructions

Under Executive Order 12549, an individual or organization debarred or excluded from participation in Federal assistance or benefit programs may not receive any assistance award under a Federal program, or a subagreement thereunder for \$25,000 or more.

Accordingly, each prospective recipient of an EPA grant, loan, or cooperative agreement and any contract or subagreement participant thereunder must complete the attached certification or provide an explanation why they cannot. For further details, see 40 CFR 32.510, Participants' responsibilities, in the attached regulation.

Where To Submit

The prospective EPA grant, loan, or cooperative agreement recipient must return the signed certification or explanation with its application to the appropriate EPA Headquarters or Regional office, as required in the application instructions. A prospective prime contractor must submit a completed certification or explanation to the individual or organization awarding the contract.

Each prospective subcontractor must submit a completed certification or explanation to the prime contractor for the project.

How To Obtain Forms

EPA includes the certification form, instructions, and a copy of its implementing regulation (40 CFR Part 32) in each application kit. Applicants may reproduce these materials as needed and provide them to their prospective prime contractor, who, in turn, may reproduce and provide them to prospective subcontractors. Additional copies/assistance may be requested from:

Compliance Branch
Grants Administration Division (PM-216F)
U.S. Environmental Protection Agency401 M Street SW
Washington, DC 20460
(Telephone: 202/475-8025)

EPA Form 5700-49 (11-88)

Attachment G. Forms Associated with DBE Requirements

It is the borrower's responsibility to ensure that the following three forms are completed and submitted appropriately.

EPA Form 6100-2 — **DBE Program Subcontractor Participation Form**

EPA Requirement: Borrowers are required to have their general contractor provide this

form to the DBE subcontractors.

Form Provided By: General contractor provides form to DBE subcontractors.

Form Completed By: DBE subcontractors.

Form Submittal Process: DBE subcontractors submit form directly to EPA: Attn. Greg Luchey,

EPA Region 10, M/A OMP-145, Seattle, WA 98101; (206) 553-2967; Luchey.Greg@epamail.epa.gov. Subcontractors also send copy to general contractor.

EPA Form 6100-3 — DBE Program Subcontractor Performance Form

EPA Requirement: Borrowers are required to have their general contractor provide this

form to the DBE subcontractors.

Form Provided By: General contractor provides form to DBE subcontractors.

Form Completed By: DBE subcontractors.

Form Submittal Process: DBE subcontractors submit form to general contractor.

General contractor includes the forms in their bidding submittal

package, which is submitted to borrower. General contractor submits form to EPA.

EPA Form 6100-4 — DBE Program Subcontractor Utilization Form

EPA Requirement: Borrowers are required to have their general contractor complete this

form if they utilize DBE subcontractors.

Form Provided By: Borrower provides form to general contractor.

Form Completed By: General contractor.

Form Submittal Process: General contractor submits form as part of their bidding submittal,

which is submitted to borrower.

General contractor also submits form to EPA.



OMB Control No: 2090-0030 Approved: 05/01/2008 Approval Expires: 01/31/2011

Disadvantaged Business Enterprise Program DBE Subcontractor Participation Form

NAME OF SUBCONTRACTOR		PROJECT NAME	
ADDRESS		CONTRACT NO.	
TELEPHONE	NO.	EMAIL ADDRESS	
PRIME CON	TRACTOR NAME		
	space below to report any concerns regar prime contractor, late payment, etc.).	arding the above EPA-funded p	project (<u>e.g.</u> , reason for
CONTRACT ITEM NO.	ITEM OF WORK OR DESCRIPTION OF THE PRIME CONTRACTOR	SERVICES RECEIVED FROM	AMOUNT SUBCONTRACTOR WAS PAID BY PRIME CONTRACTOR
	<u> </u>	Tid /D /	
Subcontractor Signature		Title/Date	

Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

OMB Control No: 2090-0030 Approved: 05/01/2008 Approval Expires: 01/31/2011



Disadvantaged Business Enterprise Program DBE Subcontractor Participation Form

The public reporting and recordkeeping burden for this collection of information is estimated to average fifteen (15) minutes. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed EPA DBE Subcontractor Participation Form to this address.

OMB Control No:
Approved:
Approval Expires:



Disadvantaged Business Enterprise Program DBE Subcontractor Performance Form

NAME OF SUBCONTRACTOR ¹		PROJECT NAME		
ADDRESS		BID/PROPOSAL NO.		
TELEPHONE NO.		E-MAIL ADDRESS		
PRIME CONTRAC	CTOR NAME			
CONTRACT ITEM NO.	ITEM OF WORK OR DESCRIPTION BID TO PRIME	OF SERVICES	PRICE OF WORK SUBMITTED TO PRIME CONTRACTOR	
Currently certified	as an MBE or WBE under EPA's DB	E Program?Yes	No	
Signature of Prime Contractor		Date		
Print Name		Title		
Signature of Subcontractor		Date		
Print Name		Title		

¹Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.



OMB Control No:	
Approved:	
Approval Expires:	

Disadvantaged Business Enterprise Program DBE Subcontractor Performance Form

The public reporting and recordkeeping burden for this collection of information is estimated to average fifteen (15) minutes. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed EPA DBE Subcontractor Performance Form to this address.



BID/PROPOSAL NO.

OMB Control No: 2090-0030 Approved: 05/01/2008 Approval Expires: 01/31/2011

Disadvantaged Business Enterprise Program DBE Subcontractor Utilization Form

PROJECT NAME

NAME OF PRIME BIDDER/PROPOSER		E-MAIL ADDRESS			
ADDRESS					
TELEPHONE NO.		FAX NO.			
The following subcontractors1 will	be used on	this project:			
COMPANY NAME, ADDRESS, PHONE NUMBER, AND E-MAIL ADDRESS	TYPE OF WO PERFORME			ESTIMATE D DOLLAR AMOUNT	CURRENTLY CERTIFIED AS AN MBE OR WBE?
I certify under penalty of perjury that the replacement of a subcontractor, I will adh Section 33.302(c).					
Signature of Prime Contractor			Date		
Print Name			Title		

Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.



OMB Control No: 2090-0030 Approved: 05/01/2008 Approval Expires: 01/31/2011

Disadvantaged Business Enterprise Program DBE Subcontractor Utilization Form

The public reporting and recordkeeping burden for this collection of information is estimated to average fifteen (15) minutes. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed EPA DBE Subcontractor Utilization Form to this address.

Attachment H. Central Contractor Registration (CCR) Database and Reports

Attached are tips and important notes regarding the registration and reporting in the Central Contractor Registration database.

U.S. EPA, Office of Grants and Debarment Tip Sheet for Registering with the Central Contractor Registration (CCR)

What is CCR?

- The CCR is a government-wide registry for organizations that seek to do business with the federal government. The CCR collects, validates, stores and disseminates data to support a variety of federal initiatives.
- Already registered? An organization may check if it is already registered by logging onto www.ccr.gov, clicking on "Search CCR," and providing the organization's DUNS number.
- Need to register? If an organization is not registered, it may register online at www.ccr.gov.
 CCR has developed a user guide at http://www.ccr.gov/doc/CCRUsersGuide. pdf and a handbook at http://www.ccr.gov/Handbook.aspx to assist with the process. These publications include details on the information that will need to be gathered to complete the CCR registration process.

How long should CCR Registration take?

- If an organization already has an Employer Identification Number (EIN) or Taxpayer Identification Number (TIN), it should allow a minimum of 48 hours to complete the entire CCR registration.
- If an organization does not have an EIN or TIN, it should allow two weeks for obtaining information from IRS when requesting the EIN or TIN via phone or Internet. The delay is due to security information that is mailed to the organization.

When an organization registers with the CCR, it must provide:

- **DUNS number.** The Data Universal Numbering System (DUNS) Number is a unique nine-character identification number provided by D&B. Organizations may call D&B at 1-866-705-5711 or access the website http://fedgov.dnb.com/webform if they do not have a DUNS Number. The process to request a DUNS Number via phone takes about 10 minutes and is free of charge. Internet requests are fulfilled within 24 hours. Once a DUNS Number has been issued, it will be available for use in CCR within 24 hours.
- U.S. Federal TIN. The Tax Identification Number (TIN) is the nine-digit number which is either an Employer Identification Number (EIN) assigned by the Internal Revenue Service (IRS) or Social Security Number (SSN) assigned by the Social Security Administration (SSA). If an organization does not have a TIN/EIN, contact the IRS at 1-866-255-0654.
- CCR Point of Contact (CCR POC).
 This individual is responsible for maintaining the accuracy and timeliness of the information in the CCR registry for the organization.
- Electronic Business Point of Contact (EB POC). This individual will have sole authority to designate the staff member(s) who may represent the organization to federal business systems. The same individual may serve as both the CCR POC and as the EB POC.
- Marketing Partner ID (MPIN). During registration, organizations will be asked to designate a special password called an MPIN. Record and protect passwords.

U.S. EPA, Office of Grants and Debarment Tip Sheet for Registering with the Central Contractor Registration (CCR)

Important Notes:

- CCR registration must be updated or renewed at least once a year or it will expire. CCR will alert the CCR POC when it is time for renewal.
- Organizations must ensure that all information contained in each database, the **D&B DUNS, IRS and CCR databases, matches exactly.** For example: if an organization's address is 123 First Street in one database entering 123 1st St. in another database will significantly delay the CCR registration process.
- CCR uses data from the D&B DUNS number record for each CCR registrant's name and address. If, upon review, an organization finds that any name or address information in their CCR registration needs to be updated, it will have to go back to D&B, which in turn will send the modified data to CCR where the CCR POC will have to accept it. An update will add a minimum of 2 days to the CCR registration process.
- CCR also verifies with the IRS the Tax Identification Number (also known as the TIN or EIN) that each organization provides during the registration process. Because of this, it may take CCR 2 or 3 days after receipt of an organization's information, with a D&B-validated name and address, to finalize a CCR registration.
- After the CCR registration is complete, CCR will e-mail a confirmation to the CCR POC.

Attachment I. Bid Packet Checklist

The bid solicitation must include the following information and materials: ☐ Source of federal assistance (ARRA) identified ☐ Jurisdiction identity ☐ Contact person and phone number ☐ Date, time, and place of public bid opening ☐ Basis for rejecting bids Any factors, in addition to lowest price, which will determine the lowest, responsible bidder, or responsive bid ☐ State license requirement ☐ Clear, accurate descriptions of technical requirements for materials, products, or services (specifications) ☐ Plans and other pertinent attachments ☐ DWSRF ARRA-specific requirements: o Project Signs o Disadvantaged Business Enterprise Prevailing Wage/Davis Bacon Buy American Iron, Steel, and Manufactured Goods Suspension and Debarment Certification **Prohibition Statement Nondiscrimination Provision** o Protection of Whistleblowers Reporting in Accordance with Section 1512 of the ARRA Listing Job Openings with ESD ☐ Specify that a five percent (5%) bid guarantee is required ☐ Bond requirements (for municipal borrowers only): o Specify that a 100% Performance Bond is required (contracts of \$100,000+) Specify that a 100% Payment Bond is required (contracts of \$100,000+)

☐ Labor Standards Requirements



Applicable Federal Wage Decision
Applicable State Wage Decision
Equal Opportunity and Affirmative Action Provisions (refer to your loan contract General Terms and Conditions)

Attachment J. Notice of Contract Award and Notice to Proceed

PUBLIC WORKS BOARD DRINKING WATER STATE REVOLVING FUND AMERICAN RECOVERY AND REINVESTMENT ACT

Borrower			
Date Bid Solicitation Published			**
Bid Opening Date/Number of Bids Re	eceived		
Names/Addresses of Disadvantaged F	Business Enterprise Solicited	d	
Date Contract Awarded	Con	tract Amount \$	
Federal Department of Labor Prevaili	ng Wage Rates:		
Wage Decision Number:	Modification N	umber:	
A "NOTICE OF SUSPENSIO MUST BE SIGNED BY TI To obtain this form, dov		ATTACHED TO T	THE CONTRACT.
Name of Contractor			
Date Notice to Proceed Issued			
Start of Construction Date			
Submitted By:			
Signature			
Name	Street Address		
Title	City	State	Zip
Phone			

^{**} Please attach copy of published bid solicitation advertisement.

Attachment K. Borrower's Checklist for DWSRF ARRA Projects

Note: Copies of ALL documents received and/or submitted must be maintained by the borrower and will be required for the follow-up audit! The section numbers below refer to the sections in the *Borrower's Handbook*.

Envi	conmental: Project Review Sheet EZ-1, EZ-2 to Aleceia Tilley, DOH
	Environmental Review (SERP); National Historic Preservation Act (Section 2) O Municipalities <u>must</u> offer a public comment period
Loan	Contract
	If not already done: make sure DOH will approve the Project Report and Construction Documents
	Non Municipal: receive PWB approval of Financial Capacity
	Approve Scope of Work as prepared by the PWB
	Receive certification from the Governor's office
	Loan contract may specify requirements such as complete WSP or SWSMP per Time of Performance date and receive DOH approval of same by project completion
	Non-Municipal: proof of liability insurance coverage to CAU within 30 days of contract signing (Section 21.2)
	For Public Works Board to execute your contract, and for you to get reimbursed, you need to have a DUNS number. Please apply for the DUNS number as soon as possible. The DUNS number is free and very easy to apply for and get. All you need to do is visit this website: http://fedgov.dnb.com/webform/ or call 1-866-705-5711 Before you apply, you will need to assemble the following information:
	• Legal name
	 Physical address, city, state and zip code
	 Mailing address (if different)
	Telephone number
	• Contact name
	• SIC code (line of business)
	 Number of employees at your location
	Borrower registers with the Central Contractors Registration Data Base (CCR) (Section 15.2, Attachment H). Not truly required here, but a good time to do it.
Prior	to Reimbursement for Pre-Construction Activities
	Contract must be awarded
	Costs must have been incurred after March 1, 2009

	Non-Municipal: proof of liability insurance to CAU; dedicated loan repayment account established (Section 21)
	Reimbursement requests submitted using A-19 Voucher Invoice form to CAU
Prior	to Bid and Bid Opening
	DOH has approved the Project Report and Construction Documents
	Environmental/Cultural Review Completion Letter or Determination of Nonsignificance
	Complete bid package checklist (Attachment I)
	Meet "DBE Good Faith Effort" (Section 11.3)
	Obtain federal/state Wage Determinations (Attachment A)
	Non-Municipal: proof of liability insurance to CAU; dedicated loan repayment account established (Section 21)
	Prior to advertising, send copy of draft ad to CAU for review
	10 days prior to bid opening, confirm with CAU wage rates have not changed
Befor	re Award of Construction Contract
	Should set up EFT account: OFM 360-664-7779 or e-mail vendorhelpdesk@ofm.wa.gov
	Document that there is no federal debarment or suspension of contractor (Attachment F, EPA form 5700-49)
	O Search <u>www.epls.gov</u>
	O Save copy for file, also send one to CAU
	Must award construction contract before February 17, 2010
	Meet with contractor and review all ARRA requirements O Contractor must post sign indicating funding sources and ARRA logo obtained from http://www.recovery.gov/?q=content/president-and-vice-president-unveil-new-recovery-emblemdownload-available or by writing to the EPA regional office at: EPA Region 10, Mail Code OMP-145, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101
	Ensure non-discrimination language is in contract (Section 12)
	Statement of Intent to Pay Prevailing Wages signed by contractor
	Statement that the contractor will agree to conditions for "Protection of Whistleblowers" (Section 13)
	Statement that the contractor will agree to conditions of "Prohibition Statement" (Section 14)
	Ensure contractors post job openings at Employment Security website $\begin{tabular}{ll} ARRA@esd.wa.gov \\ and report hiring results (Attachment B) \end{tabular}$
	Buy American provisions (Attachment E)
	Submit Notice of Award and Notice to Proceed to CAU (Attachment J)
	Contractor is aware of DBE documentation (if used) at end of contract (Attachment G)



Prior	to Reimbursement for Construction Activities
	Issued a Notice of Award and Notice to Proceed (Attachment J)
	Davis-Bacon Requirements met and sent to CAU:
	O Employee interviews conducted
	O Statement of Intent to Pay Prevailing Wages signed by contractor
	O Weekly certified payroll form received with certification of compliance
	DOH has approved the Project Report and Construction Documents
	Complied with any loan contractual conditions required by DOH or PWB
	Reimbursement requests submitted using A-19 Invoice Voucher form to CAU; Buy American certification with <u>every</u> A-19 submission; "All provisions of the DOH ARRA Handbook Attachment E regarding Buy American provisions have been met."
Proje	ct Completion: there is a 10% retainage of funds until project is completed
	DOH forms at: http://www.doh.wa.gov/ehp/dw/forms/forms.htm
	Submit Construction Completion Report to DOH and copy to CAU
	Complied with any loan contractual conditions required by PWB
	Disadvantaged Business Enterprise (DBE) documentation if used (Attachment G)

This checklist was prepared by the Rural Community Assistance Corporation.